



## PRESS RELEASE

State of Iowa  
**Citizens' Aide/Ombudsman**  
August 19, 2002  
**RE: Investigative Report 02-01**

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DES MOINES — Law officers generally acted appropriately in a high-speed chase which ended in the deaths of three teen-agers in Tama County last year, according to a report released today by State Ombudsman Bill Angrick.

The 77-page report, available to the public upon request, is based on the Ombudsman's investigation of the April 6, 2001 chase which started in Toledo and ended at a "T"-intersection in northern Tama County. The chase involved a Toledo police officer, two deputies from the Tama County Sheriff's Department, and a reserve deputy sheriff. An Iowa legislator asked Angrick to investigate the incident, to determine whether the officers had acted appropriately.

The report says many actions by the officers were appropriate. Although Angrick concludes the officers violated certain parts of the departments' pursuit policies, the report focuses on the policy provisions themselves, noting that they either lacked clarity or consistency with management expectations and actual practices in all but one instance. Given the Ombudsman's role of helping to improve government, the report makes several recommendations regarding the policies.

The chase started at 1:50 a.m. when a Toledo Police Officer saw a vehicle go backwards on Highway 63. It then went forward and ran a stop sign at the intersection with Highway 30 in Toledo. The officer approached with his lights and siren on, but the vehicle sped away.

A deputy and a reserve deputy of the Tama County Sheriff's Department joined the pursuit, which reached 90 miles per hour within 10 blocks. The pursuit continued north from Toledo on Highway 63, when officers learned the suspect vehicle had possibly been stolen. The sheriff's deputy tried to maneuver his squad car in front, in an effort to slow the suspect vehicle down, but it swerved towards his car, forcing him to slow down.

The pursuit then went even faster – a deputy averaging 120 miles per hour was falling behind the suspect vehicle, which he estimated was going 140 to 150 miles per hour.

The pursuit ended less than nine minutes after it began, when the suspect vehicle went out of control at a T-intersection. Officers did not see the crash, but came upon it shortly after it happened. Two officers rescued an occupant from the burning vehicle, but said they could not get anybody else out due to excessive heat and flames. Three teen-agers died at the scene; the fourth received serious injuries and was hospitalized for nearly three weeks.

Regarding the policy violations, the report says the sheriff's deputies joined the pursuit without receiving a request from the Toledo police officer and without obtaining authorization from a supervisor, as required by departmental policy. On that point, however, Angrick wrote that he "finds the Tama County Sheriff's office pursuit policy is inconsistent with deputies' practice and the sheriff's expectations."

The lone exception involved a Toledo Police Officer's failure to inform dispatch and other officers of the nature of the pursuit, as required by his department's policy. Angrick's report does not find fault with that particular policy provision.

Based on his findings and conclusions, the Ombudsman's report has seven recommendations for improving how law enforcement agencies handle high-speed chases. Included are recommendations that:

1. The Toledo Police Chief and Tama County Sheriff review and amend current pursuit policies, particularly to ensure those policies are consistent with departmental expectations.
2. They take into consideration the International Association of Chiefs of Police 1996 sample policy and other relevant model policies.
3. They periodically review pursuit policies with all personnel.
4. Supervisory personnel debrief officers involved in a pursuit.

The Toledo Police Department's reply, written by Des Moines attorney Gregory Witke, states that "should anyone interpret your report as being critical with the steps taken by Officer Kendall and the Toledo Police Department in this matter, we would like to be on record as saying we do not agree with any such interpretation." An unedited version of Witke's two-page reply is attached to the report.

Tama County's response to the report, written by West Des Moines attorney Carlton Salmons, disagrees with several of the Ombudsman's findings. On a general note, Salmons wrote that the report "should acknowledge that the events examined here in circumspect detail and in the detached luxury of quiet contemplation are light-years removed from the literal split-second decisions those involved are empowered to make."

Regarding the Ombudsman's recommendations, Salmons wrote that the issue of modifying the sheriff's pursuit policy "is fraught with legal peril when the threat of litigation over that incident has been made, as here."

Salmons added he would advise the sheriff "to undertake the review your recommendations suggest ... when any litigation is finally concluded or the applicable statutes of limitation have run their course." An unedited version of Salmons' 21 page response is attached to the report.

Copies of the full report can be obtained off the Ombudsman's web site. The Ombudsman can investigate complaints about most agencies of state and local government. Iowans can contact the office as follows:

- Toll-free at 1-888-IA-OMBUD (426-6283) or at (515) 281-3592.
- The office has a TTY which can be reached using the toll-free number or at (515) 242-5065.
- Its fax number is (515) 242-6007.
- Internet users can e-mail the office at: [ombudsman@legis.state.ia.us](mailto:ombudsman@legis.state.ia.us)
- The office's Internet address is <http://staffweb.state.ia.us/cao/>

**INVESTIGATIVE REPORT  
02-01**

**STATE OF IOWA**



***CITIZENS' AIDE/OMBUDSMAN***

**INVESTIGATION OF A HIGH-SPEED LAW ENFORCEMENT PURSUIT INVOLVING  
TOLEDO POLICE DEPARTMENT AND THE TAMA COUNTY SHERIFF'S OFFICE**

**TO: SHERIFF DENNIS KUCERA  
TAMA COUNTY SHERIFF'S OFFICE**

**AND**

**CHIEF WAYNE MARTIN  
TOLEDO POLICE DEPARTMENT**

**RE: CASE FILE 01-1758**

**ISSUED: JUNE 28, 2002**

**RELEASED: AUGUST 19, 2002**

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# High Speed Pursuit Investigation

High-speed pursuits are problematic as described by the United States Supreme Court in *Sacramento v. Lewis*, 523 U.S. 833, 853 (1998):

. . . [T]he police on an occasion calling for fast action have obligations that tend to tug against each other. Their duty to restore and maintain lawful order, while not exacerbating disorder more than necessary to do their jobs. They are supposed to act decisively and to show restraint at the same moment, and their decisions have to be made “in haste, under pressure, and frequently without the luxury of a second chance.” [Citations omitted] (“[P]olice officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving”). A police officer deciding whether to give chase must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to all those within stopping range, be they suspects, their passengers, other drivers, or bystanders.

## OVERVIEW

In the early morning hours of April 6, 2001 a Toledo Police Department officer initiated a pursuit after observing a vehicle backing up on a highway and then failing to stop at a stop sign. The officer activated his lights and sirens. The suspect vehicle did not stop but proceeded out of town at a very high rate of speed.

Two nearby Tama County Sheriff’s deputies in their vehicles witnessed the fleeing vehicle and heard the Toledo officer’s radio call into dispatch. The deputies joined in the pursuit. The pursuit ended less than ten minutes later when the suspect vehicle failed to negotiate a turn at a T-intersection on the highway north of Toledo. A technical investigative report by the Iowa State Patrol calculated the speed of the suspect vehicle (a 1990 Lexus LS400) at 86 miles per hour (MPH) when it left the highway.

There were four teenagers in the suspect vehicle. Three died at the scene and the fourth received serious injuries. The fourth teenager was released from the hospital on April 25, 2001.

The tragic end to this law enforcement pursuit was dramatically reported in several newspapers. On April 10, 2001 an Iowa legislator asked the Citizens’ Aide/Ombudsman

(Ombudsman) to inquire into the circumstances of this pursuit. The Ombudsman assigned the case to Assistant Citizens' Aide/Ombudsman Rory Calloway. For reference purposes in this report, actions taken in the investigation by Rory Calloway will be ascribed to the Ombudsman.

The Ombudsman made initial, informal contact with the Tama County Sheriff's Office, Toledo Police Department, and the Commissioner of the Iowa Department of Public Safety (DPS) requesting copies of incident reports and department policies on pursuits. DPS was contacted because the Iowa State Patrol conducts technical accident scene investigations when law enforcement pursuits result in property damage, physical injury, or death. The Iowa State Patrol was not directly involved in the pursuit.

While gathering initial information, the Ombudsman determined the inquiry would extend beyond specifics of this pursuit to a broader investigation of pursuit policies. The Ombudsman issued formal notice of investigation on April 27, 2001.

The notice stated the scope of the inquiry was to include, but not be limited to:

- Reasonableness of high-speed pursuit policies established or adopted by each agency.
- Compliance with those policies in this particular case.
- Sufficiency of education and training of officers in high-speed pursuit techniques and policy.
- Consistency in policies between jurisdictions.
- Adequacy of consideration of alternatives in adopting current high-speed pursuit policies.

The Ombudsman gathered official reports and statements, conducted interviews with law enforcement and dispatch personnel, listened to an audiotape of the radio communications related to the pursuit, researched model pursuit policies published by national law enforcement organizations, analyzed statistical information related to law enforcement pursuits, drove the route of the pursuit, assessed agency policies and Iowa law, and reviewed abstracts and full texts of many pertinent journal articles.

The Ombudsman did not interview the surviving occupant in the suspect vehicle. This decision was based in part on the survivor obtaining legal counsel who stated in a letter to the Toledo Police Department and the Tama County Sheriff's Office, "I have advised [my client] and the family not to make any statements regarding the vehicle or the accident at this time." A parent of this teenager did not respond to the Ombudsman's repeated inquiries for an interview with the son.



## **CHRONOLOGY OF THE PURSUIT**

The following sequence of events in this pursuit is drawn from the sworn statements and official reports of the law enforcement officers involved in the pursuit. The Ombudsman also compared the chronologies presented during interviews with the officers (conducted three months after the incident) to their contemporaneous written statements.

### **TOLEDO POLICE OFFICER BOB KENDALL INITIATES THE PURSUIT**

Toledo Police Department Officer Bob Kendall was on routine patrol duty at approximately 1:50 A.M. on the morning of April 6, 2001. His patrol car was running low on fuel. Officer Kendall said he was driving toward a gas station when he observed a vehicle at the intersection of Highways 63 and 30 on the south side of Toledo. This intersection is a four-way stop posted with stop signs. The vehicle was southbound on Highway 63. Officer Kendall was about two blocks east of the intersection on Highway 30. Officer Kendall watched as the car backed up on the highway for a distance of approximately 30 to 40 feet. The vehicle then drove forward, did not stop at the stop sign, and turned right (westbound) onto Highway 30. Officer Kendall stated he could not identify the vehicle other than it was a dark colored sedan. The car was later identified as a 1990 Lexus LS400 with a Black Hawk County license plate.

By backing up on a highway the driver of the suspect vehicle had not necessarily violated Iowa law.<sup>1</sup> However, the maneuver drew Officer Kendall's attention. Officer Kendall told the Ombudsman that when the driver turned right without stopping at the stop sign he determined the suspect vehicle driver had violated Iowa Code Section 321.322 and decided to pull the vehicle over.<sup>2</sup>

Officer Kendall turned on his lights and sirens when he observed the suspect vehicle go through the intersection without stopping at the stop sign. The suspect vehicle then turned

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<sup>1</sup> **Iowa Code Section 321.323** -- A person shall not cause a vehicle to be moved in a backward direction on a highway unless and until the vehicle can be backed with reasonable safety, and shall yield the right of way to any approaching vehicle on the highway or an intersecting highway which is so close as to constitute an immediate hazard.

<sup>2</sup> **Iowa Code Section 321.322** -- The driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection or at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection.

into a convenience store parking lot, onto a side street, back onto Highway 30 without stopping at the posted stop sign, went through the four-way stop at the intersection of Highways 63 and 30 (again failing to stop as posted), and proceeded north on Highway 63. The suspect vehicle rapidly accelerated as it continued through town and toward the city limits.

Officer Kendall radioed 911 Emergency Management Communications Center (Dispatch) and informed them he was in a pursuit. His report states that within 9 to 10 blocks the suspect vehicle had reached a speed of about 90 MPH. Officer Kendall recalled looking at his speedometer near the High Street intersection. He was traveling about 90 MPH and was just keeping up with the suspect vehicle. Although the route of the pursuit was on Highway 63, this section of the highway, being within the city limits, has a posted speed limit of 35 MPH.

#### **DEPUTY BRUCE RHOADS AND RESERVE DEPUTY IAN MALLORY JOIN THE PURSUIT**

Tama County Sheriff's Deputy Bruce Rhoads was leaving the sheriff's office at approximately 1:50 A.M. He had just picked up a search warrant and was on his way to serve the warrant. Reserve Deputy Ian Mallory left the sheriff's office shortly after Deputy Rhoads to assist him in serving the warrant. From Deputy Rhoads' statement and interview, he was southbound on Highway 63 near Ross Street when he saw the flashing top lights of the Toledo police vehicle. He also observed a vehicle proceeding northbound ahead of the law enforcement vehicle. Deputy Rhoads watched as the suspect vehicle accelerated toward him and away from the Toledo police car. He heard Officer Kendall's radio call into dispatch that he was in a pursuit. After Officer Kendall passed him, Deputy Rhoads turned his car around, turned on his lights and siren, and joined the pursuit.

Reserve Deputy Ian Mallory was a few blocks behind Deputy Rhoads leaving the sheriff's office. He watched as the pursuit passed in front of him while he was stopped at the intersection of Highway 63 and State Street. After the three vehicles passed him (suspect vehicle, Officer Kendall, and Deputy Rhoads), he turned on his lights and sirens, turned onto the highway, and joined in the pursuit behind Deputy Rhoads.<sup>3</sup>

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<sup>3</sup> The Ombudsman asked Mallory about his decision to join in the pursuit:

Deputy Rhoads' and Officer Kendall's written reports state the suspect vehicle continued to accelerate as it reached the city limits. Officer Kendall said he never got close enough to read the car's license plate number. The distance between Officer Kendall and the suspect vehicle continued to increase. After leaving the city limits, Deputy Rhoads passed Officer Kendall and moved up close enough to the suspect vehicle to obtain the license plate number. Deputy Rhoads called this into Dispatch and was soon advised the suspect vehicle had been reported stolen. At this point, what had begun as a stop for a simple misdemeanor traffic violation was now an effort by law enforcement to apprehend a possible felon.<sup>4</sup>

Deputy Rhoads reported that after he called in the plate number to dispatch he attempted to pass the suspect vehicle in order to perform a "rolling roadblock." This is a technique in which the law enforcement vehicle in front of a suspect vehicle starts to slow down, forcing the suspect's vehicle to remain behind, reduce speed, and eventually bring the vehicle to a stop. In this case, as Deputy Rhoads attempted to pass, the suspect vehicle swerved toward Deputy Rhoads when he was almost parallel to the suspect vehicle. Deputy Rhoads', Officer Kendall's, and Reserve Deputy Mallory's reports describe Deputy Rhoads applying his breaks and steering to the left to avoid being pushed into the ditch. Mallory stated he could see the front end of Deputy Rhoads' vehicle dip down from braking sharply. Once clear of being beside the suspect vehicle, Deputy Rhoads continued the pursuit.<sup>5</sup>

The Ombudsman asked Deputy Rhoads how fast he was traveling when he attempted to pass the suspect vehicle. Deputy Rhoads responded that he attempted to pass when he felt the pursuit was still traveling at a reasonable rate of speed. He recalled the vehicles were

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Ombudsman: "So was it your intention then to back up or assist in this?"

Reserve Deputy Mallory: "It was not my intention to assist Officer Kendall at all. Uh, I drove down to – it happened a little more quickly than my intention – I drove to the intersection where I knew the pursuit would come by and I saw Deputy Rhoads also initiating and joining in the pursuit. And that time I thought that I should also."

<sup>4</sup> **Iowa Code Section 714.2** – Theft of a motor vehicle valued at over \$10,000 is a Class "C" felony. Theft of a motor vehicle valued at more than \$1,000 but less than \$10,000 is a Class "D" felony. **Iowa Code Section 714.7** – Operating a Motor Vehicle Without Owner's Consent is an Aggravated Misdemeanor.

<sup>5</sup>**NOTE:** At this point, the statements of Rhoads and Kendall differ. Kendall says that Rhoads fell in behind him when he had to slam on his brakes to avoid being hit by the suspect vehicle. Rhoads says that he was able to maintain in the second position. Mallory says that Rhoads maintained position directly behind the suspect vehicle.

going about 80 to 90 MPH when he tried to pass. After the attempted pass, Deputy Rhoads notes in his report the pursuit was up to 100 MPH.

Approximately seven miles north of Toledo, near the intersection of county road E29, Officer Kendall withdrew from the pursuit. He was falling further behind Deputy Rhoads and the suspect vehicle and he was running out of fuel. The pace of the pursuit increased. Deputy Rhoads reported to Dispatch he was averaging about 120 MPH and he was having trouble keeping pace with the suspect vehicle.

#### **DEPUTY MICHAEL WRIGHT ASSISTS**

Sometime shortly after leaving the city limits, around the time Deputy Rhoads attempted to pass the suspect vehicle, Deputy Rhoads says he requested all law enforcement personnel in the area switch to radio channel LEA (Law Enforcement Aid). Deputy Rhoads said he also broadcast an inquiry on the availability of any officer north of the pursuit who carried a set of stop-sticks and could deploy them ahead of the pursuit.<sup>6</sup>

Tama County Deputy Michael Wright was on patrol on Highway 96 west of the T-intersection of Highways 63 and 96 when dispatch notified him of the pursuit. He turned on his lights and siren, proceeded to Highway 63 and turned south. He did not have a set of stop-sticks in his vehicle. He also did not switch to channel LEA. Deputy Wright told the Ombudsman:

I came over the radio and, uh, unknown to me we were on different frequencies. He [Deputy Rhoads] was on LEA and I was on the Repeater, which is our normal, um, station for dispatch. I didn't know that he had switched over. So, I was talking over the radio but he was not hearing me. Dispatch was hearing me. So, we were getting our communications kind of fouled up there because, um, Dispatch knew where I was at but he couldn't hear what I was telling him.

Dispatch told Deputy Rhoads that Deputy Wright was north of his location. About a mile and a half south of the intersection of Highways 63 and 96 Deputy Wright met the suspect vehicle. Deputy Wright told the Ombudsman he hoped the driver of the suspect vehicle would see his flashing lights ahead of him and would decide to pull over.<sup>7</sup> As Deputy

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<sup>6</sup> **NOTE** – stop-sticks are a device that punctures car tires, and this should then keep the pursued vehicle from either proceeding at all or at least slows it down.

<sup>7</sup> From the Ombudsman's interview of Deputy Wright:

Wright and the suspect vehicle approached each other, Deputy Wright states he remained in the southbound lane but the suspect vehicle started moving from the northbound lane toward the center of the highway, and then moved more directly toward him in the southbound lane. Deputy Wright pulled off onto the shoulder to avoid a collision with the suspect vehicle.

Deputy Rhoads had fallen a considerable distance behind the suspect vehicle. During his interview with the Ombudsman, Deputy Rhoads said he did not have an estimate of the distance he was behind the suspect vehicle but noted at that time he could only see the vehicle's taillights. After the suspect vehicle and Deputy Rhoads passed Deputy Wright, Deputy Wright turned around and joined the pursuit.

Deputy Wright told the Ombudsman he was able to complete his U-turn and join the pursuit behind Deputy Rhoads before Reserve Deputy Mallory's vehicle came into view. This is an indication of how far behind the main pursuit vehicles Reserve Deputy Mallory was at this point.

#### **PURSUIT ENDS WITH COLLISION OF THE SUSPECT VEHICLE WITH A UTILITY POLE**

Deputy Rhoads said he lost sight of the suspect vehicle's taillights as it crested the hill south of the T-intersection of Highways 63 and 96. The crest of this hill is approximately one-quarter mile before the T-intersection. The T-intersection is about thirteen miles north of Toledo. At this time Deputy Rhoads was so far behind the suspect vehicle that he said he only hoped to be able to see which way the suspect vehicle turned at the intersection. He could then radio the information to any available officers ahead of the location. When Deputy Rhoads crested the hill he initially did not see any taillights or other indication of the suspect vehicle. Deputy Rhoads' written report states that as he neared the intersection he noticed the glow of a fire in the north ditch of the intersection. The suspect vehicle had failed to negotiate the turn, collided with and came to a stop against a utility pole. The vehicle was on fire. Deputy Rhoads reported the time as 2:00 A.M. – approximately nine minutes after the pursuit was initiated.

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Deputy Wright: Basically to see if I could, with my lights and everything else, get the car to stop or just slow down – pull over to the side. With my belief that if the car was coming my direction and seen my lights and stuff and knew there was a patrol car in front of them, maybe they'd go ahead and give up and pull over.

Deputy Rhoads approached the vehicle and pulled one occupant from the driver's side door area. Deputy Rhoads said the vehicle was almost totally engulfed in flames and fire was climbing several feet up the utility pole. After removing the occupant from the vehicle he carried him to an area away from the flaming wreckage. Deputy Rhoads said that when he returned to the vehicle the flames were too intense to reach any other occupants. The occupant pulled from the vehicle survived – the other three did not.

## IOWA LAW

The Code of Iowa (Code) does not specify under what circumstances a law enforcement officer may initiate or terminate a pursuit. Nor does the Code contain any provisions regarding the appropriate use of particular apprehension techniques such as stop-sticks, rolling roadblocks, or PIT (Pursuit Intervention Technique or Precision Immobilization Tactic) maneuvers.

### **APPLICABILITY OF SECTION 321.231 TO PURSUITS**

Section 321.231 of the Code does set forth traffic law exceptions available to law enforcement and other emergency vehicles. These “privileges” are allowed under certain conditions; otherwise, all other motor vehicle statutes apply to law enforcement officers.<sup>8</sup>

#### ***321.231 AUTHORIZED EMERGENCY VEHICLES AND POLICE BICYCLES.***

1. The driver of an authorized emergency vehicle, when responding to an emergency call or when in the pursuit of an actual or suspected perpetrator of a felony or in response to an incident dangerous to the public or when responding to but not upon returning from a fire alarm, may exercise the privileges set forth in this section.
2. The driver of any authorized emergency vehicle, may:
  - a. Park or stand an authorized emergency vehicle, irrespective of the provisions of this chapter.
  - b. Disregard laws or regulations governing direction of movement for the minimum distance necessary before an alternative route that conforms to the traffic laws and regulations is available.
3. The driver of a fire department vehicle, police vehicle, or ambulance, or a peace officer riding a police bicycle in the line of duty may do any of the following:
  - a. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
  - b. Exceed the maximum speed limits so long as the driver does not endanger life or property.

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<sup>8</sup> **Iowa Code Section 321.230** – The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, district, or any other political subdivision of the state, subject to such specific exceptions as are set forth in this chapter with reference to authorized emergency vehicles.

4. The exemptions granted to an authorized emergency vehicle under subsection 2 and for a fire department vehicle, police vehicle, or ambulance as provided in subsection 3 shall apply only when such vehicle is making use of an audible signaling device meeting the requirements of section 321.433 or a visual signaling device, except that use of an audible or visual signaling device shall not be required when exercising the exemption granted under subsection 3, paragraph "b" of this section when the vehicle is operated by a peace officer, pursuing a suspected violator of the speed restrictions imposed by or pursuant to this chapter, for the purpose of determining the speed of travel of such suspected violator.

5. The foregoing provisions shall not relieve the driver of an authorized emergency vehicle or the rider of a police bicycle from the duty to drive or ride with due regard for the safety of all persons, nor shall such provisions protect the driver or rider from the consequences of the driver's or rider's reckless disregard for the safety of others.

Subsection 1 appears to limit the “privileges” for all authorized emergency vehicles, including police or law enforcement vehicles, to four situations:

- When responding to an emergency call
- When in pursuit of an actual or suspected perpetrator of a felony
- When responding to an incident dangerous to the public
- When responding to a fire alarm

If only these situations were applicable, the exceptions to the traffic laws would not have applied to Officer Kendall at the moment he initiated the pursuit. When he began the pursuit, he was attempting to stop the suspect vehicle for not stopping at a stop sign – a simple misdemeanor. It was not until the pursuit had progressed out of town and reached speeds between 80 to 90 miles per hour that the officers were informed the suspect vehicle was reported stolen out of Waterloo. The officers were now pursuing a suspected perpetrator of a felony<sup>9</sup>.

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<sup>9</sup> **Iowa Code section 714.2** – 1. The theft of property exceeding ten thousand dollars in value, or the theft of property from the person of another, or from a building which has been destroyed or left unoccupied because of physical disaster, riot, bombing, or the proximity of battle, or the theft of property which has been removed from a building because of a physical disaster, riot, bombing, or the proximity of battle, is theft in the first degree. Theft in the first degree is a class "C" felony.

2. The theft of property exceeding one thousand dollars but not exceeding ten thousand dollars in value or theft of a motor vehicle as defined in chapter 321 not exceeding ten thousand dollars in value, is theft in the second degree. Theft in the second degree is a class "D" felony.



However, other language in subsections 3 and 4 seems to broaden the parameters under which the exceptions or privileges can be exercised by law enforcement officers.

Subsection 3 was amended in 1997 to add the words “or a peace officer riding a police bicycle in the line of duty.” It is not clear whether the phrase “in the line of duty” was intended to modify the entire listed group of vehicles or just peace officers on bicycles.

In construing a statute, a court considers all parts of the statute together, without attributing undue importance to any single or isolated portion. *Iowa Southern Utilities Co. v. Iowa State Commerce Commission*, 372 N.W. 2d 274 (Iowa 1985). The court will presume the legislature enacted each part of the statute for a purpose and intended that each part be given effect. *In Interest of G.J.A.*, 547 N.W.2d 3 (1996). In determining legislative intent a result that would lead to impractical and illogical consequences should be avoided. *Olsen v. Jones*, 209 N.W.2d 64 (1973).

The legislature could have just simply added peace officers on bicycles as a covered form of vehicle or transportation under subsection 3. The words “in the line of duty” were added for a reason. If the phrase “in the line of duty” applies only to peace officers on bicycles, then one possible inference is that officers in police vehicles could exercise the privileges even if they are not “in the line of duty.” Another is that the privileges are available to peace officers on bicycles whenever they are on duty, but other vehicles are restricted to only those situations under subsection 1. Both of these results are illogical. The allowable “privileges” for peace officers should not be different depending on the type of vehicle or mode of transportation involved.

If the phrase “in the line of duty” applies to all the vehicles (in addition to bicycles ridden by peace officers) in subsection 3, then it is possible to read that phrase as extending the exceptions or privileges to law enforcement officers whenever they are exercised in the line of duty. A law enforcement officer’s duty includes stopping and issuing citations for running stop signs or apprehending drivers attempting to elude law enforcement. In this case, Officer Kendall was acting “in the line of duty” in attempting to stop the suspect vehicle for an observed traffic violation and in continuing the pursuit to stop a vehicle which was eluding a police vehicle and which was also reported stolen.

This interpretation appears to be reinforced by subsection 4, which allows a peace officer to pursue a suspected violator of speed laws, without the required audible or visual signaling device, if the pursuit is for the purpose of determining the speed at which the suspect vehicle is traveling. Speed violations are not felony offenses, nor would they necessarily fall within the other restrictive situations under subsection 1. They are, however, situations a peace officer should respond to while in the line of duty.

In summary, there is no Iowa law that specifies the circumstances under which a law enforcement officer may initiate a pursuit. It is not exactly clear to what extent the Iowa Legislature intended section 321.231, a traffic regulatory law pertaining to authorized emergency vehicles, to limit the situations or circumstances for police pursuits. The Ombudsman believes the current statutory language can be read to allow for law enforcement officers to exercise the allowable privileges in any pursuits engaged in while in the line of duty. Therefore, the Ombudsman does not find these officers violated Iowa law in terms of the basis or reason for initiating and continuing the pursuit.

#### **COMPLIANCE WITH SECTION 321.231 DURING PURSUITS**

Law enforcement officers must comply with certain measures in section 321.231 while exercising the privileges accorded by that section.

Under subsection 4, a law enforcement officer is required to use an audible or visual signal if utilizing the privileges under subsections 2 and 3. All the officers in this case reported turning on both top lights and sirens when they engaged in the pursuit. The Ombudsman did not find any evidence to the contrary.

Subsection 3 allows a law enforcement officer to go through a stop signal or sign, “but only after slowing down as may be necessary for safe operation.” The vehicle may also exceed the maximum speed limits “so long as the driver does not endanger life or property.” In addition, subsection 5 states that the privileges accorded the vehicle do not relieve the driver from the duty to drive “with due regard for the safety of all persons.”

The Ombudsman considered two actions by the officers in light of these provisions. The officers in this pursuit exceeded the speed limits in their attempt to keep up with the suspect vehicle. In addition, Deputy Rhoads attempted to pass the suspect vehicle during the

pursuit. When asked what factors he considered in taking this action, Deputy Rhoads responded as follows:

I considered the chase was still at a fairly reasonable, 80 miles per hour approximately, speeds. At the place that I attempted to pass them it was fairly flat, open highway. I could see there was no civilian traffic. It was a very good, safe place to attempt to pass them.

Assistant Ombudsman Calloway drove the pursuit route and observed the area where Deputy Rhoads said he attempted to pass the suspect vehicle. The highway at that location is flat and open with wide shoulder areas and good visibility.

The weather condition reports for that area on the night of the pursuit indicated good visibility and no precipitation. At the time of the pursuit there was little traffic on the roads. The officers testified they saw only two other vehicles on the highway during the pursuit, and both vehicles safely pulled off to the side of the road.

The Ombudsman finds the officers did not violate the requirements of section 321.231 while engaged in this pursuit.

#### **IOWA LAW APPLICABLE TO THE DRIVER OF THE PURSUED VEHICLE**

##### 321.256 Obedience to Official Traffic-Control Devices.

No driver of a vehicle shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this chapter, unless at the time otherwise directed by a peace officer subject to the exceptions granted the driver of an authorized emergency vehicle.

##### 321.322 Vehicle Entering Stop or Yield Intersection

1. The driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop at the first opportunity at either the clearly marked stop line or before entering the crosswalk or before entering the intersection or at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection.

##### 321.279 Eluding or Attempting to Elude Pursuing Law Enforcement Vehicle.

1. The driver of a motor vehicle commits a serious misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle driven by a uniformed peace officer after being given a visual and audible signal to stop. The signal given by the peace officer shall be by flashing red light and siren.

For purposes of this section, "peace officer" means those officers designated under section 801.4, subsection 11, paragraphs "a", "b", "c", "g", and "h".

2. The driver of a motor vehicle commits an aggravated misdemeanor if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section and in doing so exceeds the speed limit by twenty-five miles per hour or more.
3. The driver of a motor vehicle commits a class "D" felony if the driver willfully fails to bring the motor vehicle to a stop or otherwise eludes or attempts to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section, and in doing so exceeds the speed limit by twenty-five miles per hour or more, and if any of the following occurs:
  - a. The driver is participating in a public offense, as defined in section 702.13, that is a felony.
  - b. The driver is in violation of section 321J.2 or 124.401.
  - c. The offense results in bodily injury to a person other than the driver.

During the pursuit in Tama County, the suspect driver committed violations, which, if proven in a court of law, quickly enhanced the seriousness of the criminal offenses for which law enforcement apprehension was sought. The incident started with a simple misdemeanor traffic violation of running a stop sign. When the suspect driver did not stop for the officer's lights and siren the level of alleged offense escalated to a serious misdemeanor. According to the law enforcement officers, within a few blocks the suspect was traveling approximately 80 MPH in a 35 MPH zone, which is an aggravated misdemeanor. Shortly after leaving the city limits law enforcement was informed the vehicle was reported stolen, which, if proven, made the suspect's attempt to elude law enforcement a class "D" felony. Also, near this same time, the suspect allegedly tried to ram Deputy Rhoads' car. Deputy Rhoads told the Ombudsman he considered this an assault, the penalty for which ranges from serious misdemeanor to class "D" felony. The Iowa Code states:

**708.3A Assaults on peace officers, jailers, correctional staff, fire fighters, and health care providers.**

1. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, with the knowledge that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter and with the intent to inflict a serious injury upon the peace officer, jailer, correctional staff, health care provider, or fire fighter, is guilty of a class "D" felony.

2. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter and who uses or displays a dangerous weapon in connection with the assault, is guilty of a class "D" felony.

3. A person who commits an assault, as defined in section 708.1, against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter, and who causes bodily injury or mental illness, is guilty of an aggravated misdemeanor.

4. Any other assault, as defined in section 708.1, committed against a peace officer, jailer, correctional staff, health care provider, or fire fighter, whether paid or volunteer, by a person who knows that the person against whom the assault is committed is a peace officer, jailer, correctional staff, health care provider, or fire fighter, is a serious misdemeanor.

## DEPARTMENT POLICIES

The Ombudsman obtained copies of the Toledo Police Department's pursuit policy (Toledo policy) and the Tama County Sheriff's pursuit policy (Tama policy) (Appendix A and Appendix B, respectively). The Ombudsman also collected pursuit policies from other agencies in the state as well as model policies developed by the International Association of Chiefs of Police (IACP) for comparative and analytical purposes.

Each department establishes its own set of rules and guidelines for its officers. There is no standard pursuit policy for law enforcement agencies in the state of Iowa. The "Sample Pursuit Policy" adopted by the IACP states:

This sample policy is intended to serve as a guide for the police executive who is interested in formulating a written procedure to govern vehicular pursuit. IACP recognizes that staffing, equipment, legal, and geographical considerations and contemporary community standards vary greatly among jurisdictions, and that no single policy will be appropriate for every jurisdiction.

Law enforcement jurisdictions vary in size and responsibility. Small, local jurisdictions (municipal police departments) have limited physical areas of responsibility and may require assistance from county or state authorities in pursuits or other law enforcement activities. Additionally, the resources, equipment, and experience of the officers in pursuits at the local level may be significantly less than those of larger jurisdictions. For instance, a small town police department may not have stop-sticks or other devices for apprehending fleeing vehicles.

The pursuit policies of the Toledo Police Department and the Tama County Sheriff's Office are significantly different. Toledo's policy is two pages and provides specific rules regarding communication requirements and authorizations needed to conduct certain operations. The Tama policy is ten pages. It details certain communication and authorization requirements. It also extends into permissible or recommended pursuit and apprehension tactics. The Tama policy also delineates the responsibilities of various levels of supervision in a pursuit situation.

The policies of each department, according to Toledo Police Chief Martin and Tama County Sheriff Kucera, are intended to be broad enough to cover various situations that may arise in a pursuit – each pursuit being different and that not all rules would apply. The

Ombudsman reviewed the pursuit policies of each department and analyzed those sections directly applicable to this pursuit.

The following are excerpts of the policies most directly implicated in the pursuit on April 6, 2001.

### **TOLEDO POLICE DEPARTMENT**

Officers pursuing violators and suspected violators will consider the following:

- The danger presented by the suspect.
- The probability of a later apprehension of the suspect.
- The safety of the public, the officers involved in the pursuit, and the individuals in the vehicle being pursued.

If you initiate a pursuit, you will immediately notify the Tama County Sheriff's Communications of the following:

- The reason for the pursuit.
- A description of the vehicle and its occupant(s).
- The location, direction of travel, speed, and any other critical information.

Immediately upon receiving notification of a pursuit, the Tama County Sheriff's Radio Control Room will notify the Chief of Police . . . If unable to contact the chief the following rules apply:

- Notify the Mayor if the pursuit involves other than a traffic violation or misdemeanor pursuit.
- If a serious or a felony pursuit is being initiated, you will only continue the pursuit at a safe distance until a County or State Peace Officer can continue the pursuit . . .
- The pursuit will be discontinued after 10 minutes if it appears no help will be available from the County or State in the 10-minute time span.
- The supervisory officer may order the termination of the pursuit at any time.

The chief . . . may order the use of the following tactics to apprehend a pursued vehicle . . . [a] "boxing in" or "rolling roadblock" which involve maneuvering two or more officers' vehicles so that they are behind or beside the vehicle being pursued, in order to force the pursued vehicle to stop.

At no time will the officer pull in front of the pursued vehicle while on a rolling roadblock.

**TAMA COUNTY SHERIFF'S OFFICE**

***UNDER THE GENERAL HEADING OF "POLICY"***

- All emergency vehicle operations shall be conducted in strict accordance with existing statues (sic). The pursuing deputy and supervisory personnel shall weigh the seriousness of the violator's offense or suspected crime against the potential for death or injury . . .
- The assumption that the commission of a felony constitutes automatic authorization for pursuit at all costs until suspect's apprehension **is not correct**, particularly when the suspect has not demonstrated potential for serious injury to the deputy or others.
- Personnel will be held strictly accountable for any act displaying a reckless disregard for the safety of others.

***UNDER THE HEADING "RULE"***

- Only those vehicles which are directly involved in an active vehicle pursuit (chase vehicles), the supervisor, and other law enforcement vehicles specifically authorized by the supervisor, shall engage in a vehicle pursuit.
- The authority to terminate a vehicle pursuit shall be given to the employee operating the primary pursuit vehicle and any supervisory personnel.

***IN THE SECTION TITLED "PROCEDURE", SUB-HEADING "INITIATION OF PURSUIT" THE TAMA POLICY STATES THE FOLLOWING:***

The decision to begin, responsibility to continue, and method of pursuit rests with the individual deputy involved . . . The following factors must be considered:

1. Seriousness of the offense;
2. Possibility of apprehension;
3. Conditions of the roadway and amount of vehicular and pedestrian traffic;
4. Weather conditions;
5. Availability of assistance;
6. Mechanical condition of the patrol vehicle; and
7. Deputy's emergency driving skills.

***IN THE SECTION TITLED "TERMINATION OF PURSUIT"***

The primary unit may maintain pursuit as long as it is safe to do so, or until directed to terminate the pursuit by a supervisor. Pursuing deputies and their



supervisors must continually question whether the seriousness of the crime justifies continuing the pursuit. The decision to abandon pursuit may be the most intelligent course of action.

The pursuit shall be terminated under any of the following circumstances:

- If, in the opinion of the pursuing deputy, on-duty shift supervisor, or senior supervisor, there is a clear and unreasonable danger to the deputy and other users of the highway created by the pursuit which outweighs the necessity for immediate apprehension.
- The prevailing traffic, roadway, and environmental conditions indicate the futility of continued pursuit.
- The pursued vehicle's location is no longer known.
- The suspect(s) identity has been established to the point that later apprehension can be accomplished, and there is no longer any need for immediate apprehension.
- The pursuing officer knows, or is reasonably certain, that the fleeing vehicle is operated by a juvenile and the offense constitutes a misdemeanor or a non-serious felony and the safety factors involved are obviously greater than a juvenile can cope with.

The termination of a pursuit does not prohibit following the pursued vehicle at a safe speed or remaining in the area to reinstate pursuit if the opportunity and conditions permit.

#### ***IN THE SECTION TITLED “PURSUIT TACTICS”***

The deputy shall not cause deliberate physical contact between the patrol vehicle and the vehicle being pursued, nor shall the deputy pull alongside the fleeing vehicle in an attempt to force it into any obstacle, except during an extreme situation which necessitates and justifies the use of deadly force.

#### ***UNDER “SUPERVISORY RESPONSIBILITIES”***

Supervisory personnel will monitor, coordinate, and limit the number of vehicles involved in a pursuit, as well as the length of the pursuit.

Supervisory personnel are reminded that the decision to terminate a pursuit may be the most intelligent course of action. Supervisors must weigh the seriousness of the offense against the safety of all concerned. If it is later determined by the Sheriff that a pursuit clearly should have been terminated yet was allowed to continue, the initiating deputy, on-duty shift supervisor, and senior supervisor involved may face disciplinary action.

If personnel from this Department are in pursuit in another jurisdiction, the on-duty shift supervisor shall ensure that the agencies involved are notified and shall specify whether the notification is a request for assistance or merely a courtesy notification with no participation desired.

***SECTION ON “ASSISTING UNIT’S RESPONSIBILITIES”***

A deputy will not enter an ongoing pursuit unless directly assigned to assist by the on-duty shift supervisor.

Assistance will be coordinated by the on-duty shift supervisor. The primary unit will be advised of the identity and location of backup units authorized to assist.

The active pursuit will normally involve not more than three units: the primary unit and one or two backup units.

The assisting unit will avoid intersecting the path of an oncoming high speed vehicle.

***FROM THE SECTION TITLED “PROVIDING AID TO OTHER JURISDICTIONS BOTH WITHIN AND OUTSIDE THE COUNTY”***

If a unit from another jurisdiction is engaged in a pursuit and requests assistance from the sheriff's office, the requesting agency should advise the Communications Center of the nature of the offense, location, and the description of the vehicle being pursued before personnel from the sheriff's office join in the pursuit.

A deputy who becomes aware of another agency's pursuit shall not become involved unless specifically authorized by both the on-duty shift supervisor and personnel from the other law enforcement agency.

In the event that the on-duty shift supervisor cannot be immediately contacted, the deputy may assist with the pursuit until such time as the on-duty shift supervisor can be contacted and a definitive decision on the assistance can be made.

## **DETERMINATION OF WHETHER LAW ENFORCEMENT AGENCIES FOLLOWED POLICY IN THE PURSUIT ON APRIL 6, 2001**

The pursuit policies for both Toledo Police Department and the Tama County Sheriff's Office have sections that are phrased in the manner of mandates or requirements. These sections contain words such as "shall" or "will." The Ombudsman reviewed the evidence in this pursuit to determine whether violations of these non-discretionary policy provisions occurred.

The policies for each department also contain sections with words such as "must" or "shall," which also involve the exercise of judgment or discretion. For example, the Tama policy states, "A deputy **shall**, however, terminate involvement in a pursuit **whenever the risks to the safety of all concerned outweighs the danger to the community** if the suspect is not apprehended. " [Emphasis added] While this policy item contains a mandate, it requires the officer to first make a judgment. The pursuit policies for each of these law enforcement agencies contain specific rules and factors an officer is to consider when deciding whether to initiate, continue, or terminate a pursuit. The analysis of the policies containing judgmental elements will be addressed following discussion of the mandatory rules.

### **WHETHER TOLEDO POLICE OFFICER KENDALL COMPLIED WITH MANDATORY TOLEDO POLICE DEPARTMENT POLICIES/PROCEDURES**

The Toledo policy has several mandatory provisions pertinent to this pursuit. These provisions are procedural in nature. The provisions and the Ombudsman's findings on each are as follows:

**A. [THE OFFICER WILL NOTIFY COMMUNICATIONS OF . . .] "A DESCRIPTION OF THE VEHICLE AND ITS OCCUPANT(S)" AND "THE LOCATION, DIRECTION OF TRAVEL, SPEED, AND ANY OTHER CRITICAL INFORMATION"**

After Officer Kendall informed Dispatch he was in pursuit, the dispatcher asked Officer Kendall for a description of the vehicle. Officer Kendall says he was not able to provide a description of the vehicle because he could not get close enough. He told the Ombudsman he could only see that it was a dark colored sedan. Officer Kendall also said he

could not identify how many occupants were in the vehicle. The Ombudsman asked Officer Kendall if the windows on the suspect vehicle were tinted. Officer Kendall responded:

Back window I believe was tinted. I mean it was dark enough – I couldn't see anything in that car at all. I knew there was at least one in there because someone had to be driving the car.

Officer Kendall reported his location and direction of travel. Dispatch received updates on the speeds of the pursuit but Officer Kendall did not relay this information in his initial transmission. Dispatch was informed the vehicles were traveling in excess of 80 MPH at the city limits.

The Ombudsman finds, given the circumstances, Officer Kendall substantially complied with this provision's notification requirement.

***B. [THE OFFICER WILL NOTIFY COMMUNICATIONS OF . . .] "THE REASON FOR THE PURSUIT"***

Officer Kendall confirmed in his interview with the Ombudsman he did not communicate the reason for the pursuit – the offense for which he initially intended to stop the suspect vehicle. He first attempted to pull the vehicle over for failing to stop at a stop sign – a simple misdemeanor.

In interviews with the Ombudsman, the two dispatchers on duty stated they did not request this information from Officer Kendall.

The Ombudsman finds Officer Kendall violated policy when he did not inform Dispatch or other officers of the nature of the pursuit. As a result, important information was not provided to either the police chief, the sheriff or the deputies who joined the pursuit.

***C. ASSISTANCE FROM COUNTY OR STATE PEACE OFFICERS***

Officer Kendall told the Ombudsman he did not specifically request assistance when he radioed in the pursuit. The Toledo pursuit policy does not expressly direct an officer to do this. However, as will be covered in the section on mandatory Tama County pursuit policies, the sheriff's office requires its officers to receive a request before joining in another jurisdiction's pursuit. The Ombudsman asked Chief Martin his expectations on this issue.

OMBUDSMAN: And in the department's policy, is the officer to notify dispatch, or is it notify and request assistance?

Chief Martin (MARTIN): That's the policy on any pursuit. And he's also to have dispatch notify me as the chief that he is in a pursuit. And this was done that early morning.

OMBUDSMAN: So, when you say it is policy, they are supposed to request assistance?

MARTIN: Right. And they also are supposed to notify me in case, uh, in case that there is a pursuit involved.

Later in the interview, the Ombudsman came back to this issue:

OMBUDSMAN: Going back to calling dispatch and requesting assistance. I want to clarify - Officer Kendall, when he notifies that he is in a high-speed pursuit, he is also to request assistance?

MARTIN: Well, normally any time our department requests - or are in a pursuit of any kind, it's put out on the air and other departments join.

OMBUDSMAN: So it's assumed that the county's going to [assist] if they have officers in the area?

MARTIN: If there's anybody close.

The Ombudsman concludes that, because the policy did not expressly state a requirement, Officer Kendall did not violate policy by not requesting assistance.

Nevertheless, it is not clear from the policy that the Toledo Police Department has an expectation or understanding that all pursuits initiated and called in to Dispatch by a Toledo officer will automatically be assisted by any available deputy from the Tama County Sheriff's Office or Iowa State Patrol. Since other agencies are involved, and especially since the Tama policy requires a request for assistance, it would be prudent for the Toledo Police Department to confer and coordinate with these other agencies about their policies and practices for interjurisdictional assistance.

***D. "IF YOU INITIATE A PURSUIT, YOU WILL IMMEDIATELY NOTIFY THE TAMA COUNTY SHERIFF'S COMMUNICATIONS . . ."***

Officer Kendall radioed Dispatch that he was in pursuit. This is evidenced in Officer Kendall's written statement and Dispatch's Call Summary Report. Toledo Police Department policy says this is to be done "immediately." The pursuit had traveled about two to four blocks (including going through a convenience store parking lot) when it headed north on Highway 63. This is the point Officer Kendall says he radioed in the pursuit. The

Ombudsman finds the timing of Officer Kendall's report to Dispatch substantially conforms to the policy requirement of "immediate" notification of pursuit initiation.

***E. IMMEDIATELY UPON RECEIVING NOTIFICATION OF A PURSUIT, THE TAMA COUNTY SHERIFF'S RADIO CONTROL ROOM WILL NOTIFY THE CHIEF OF POLICE***

Chief Martin told the Ombudsman dispatch personnel telephoned him at home where he monitored the events of the pursuit both over the phone and on his police scanner.

Dispatch personnel told the Ombudsman that Chief Martin was called shortly after the pursuit began. The tape of the radio communications indicates Officer Kendall also made a specific request that Chief Martin be contacted.

The Ombudsman finds this policy provision was followed properly.

***F. "AT NO TIME WILL THE OFFICER PULL IN FRONT OF THE PURSUED VEHICLE WHILE ON A ROLLING ROADBLOCK"***

Toledo pursuit policy extends to the police chief the authority to order the use of apprehension techniques including "boxing in" and "rolling roadblocks." Officer Kendall did not initiate any apprehension techniques in the pursuit. When Deputy Rhoads attempted to get in front of the suspect vehicle for a rolling roadblock, Officer Kendall's role would have been to remain behind the pursued vehicle as the deputy attempted to slow down the suspect's vehicle.

The Ombudsman finds Officer Kendall adhered to this policy provision.

**WHETHER THE ACTIONS OF OFFICER KENDALL WERE UNREASONABLE IN CONSIDERATION OF DISCRETIONARY/JUDGMENT POLICY ITEMS**

Section "A" of the policy requires the officer to make a judgment regarding initiation, continuation, and termination of a pursuit. The policy states three factors the officer is to consider in each phase of the pursuit:

1. The danger presented by the suspect.
2. The probability of a later apprehension of the suspect.
3. The safety of the public, the officers involved in the pursuit, and the individuals in the vehicle being pursued.

When the pursuit began, Officer Kendall had observed the suspect vehicle failed to stop at a stop sign. It was early morning, and according to Officer Kendall's statement, there were no other vehicles in the vicinity. After he activated his top lights, Officer Kendall stated the suspect turned quickly into a parking lot, returned to Highway 30, and accelerated after turning north on Highway 63. The first part of the pursuit on Highway 63 was within city limits with a posted speed limit of 35 miles-per-hour. The suspect vehicle reached a speed of approximately 80 MPH while still in the 35 MPH speed limit zone. Officer Kendall still did not observe any other vehicles in the area, but this higher rate of speed created a more dangerous situation.

The risk presented by the suspect was not significant but was increasing as the speed of the vehicle increased. Since Officer Kendall was not able to identify any of the occupants or read the license plate on the vehicle, it was not likely the suspect(s) could be subsequently apprehended if he terminated the pursuit. And, although the speeds of the pursuit vehicles were increasing, there were no other vehicles present. Therefore, safety concerns, at least as far as the likelihood of vehicle collision, were minimal. The Ombudsman concludes that to this point in the pursuit Officer Kendall's actions were reasonable.

Deputies from the sheriff's office joined Officer Kendall as the pursuit progressed. Officer Kendall relinquished his position as primary pursuit vehicle (law enforcement vehicle closest behind the pursued vehicle) shortly after leaving the city limits. Although the primary decisions regarding continued conduct of the pursuit were at this point the responsibility of a sheriff's deputy, Officer Kendall continued in the pursuit.

Officer Kendall no longer had primary responsibility whether to terminate the pursuit, but he needed to weigh the value of his participation and decide whether to terminate his role in it. Officer Kendall continued in the second position for several miles, but fell further behind the lead vehicles. He was aware, through radio reports by Deputy Rhoads, the suspect was traveling at very high rates of speed. The license plate of the vehicle had been identified. But, since the vehicle was reported as possibly stolen, this reduced the probability the suspect could be apprehended later.

Based on this information, Officer Kendall would have been reasonable in continuing in the pursuit. However, Officer Kendall discontinued the pursuit because he was low on fuel and was a considerable distance behind the suspect.

High-speed pursuits initiated only for minor traffic violations, especially those pursuits ending in collisions or loss of life, are a public concern. Pursuits are fluid situations and the seriousness of the offense and the potential danger to the public can quickly escalate. Chief Martin told the Ombudsman his concerns regarding pursuits initiated for violation of minor traffic laws.

MARTIN: We don't like to see a pursuit of just a very minor traffic violation if it's going to last any time at all. This particular instance, the officer I think thought he had a possible drunk driver. Backing up from the stop sign and then going through a stop sign and not stopping. And then he was just basically going to stop – check it out. See what the situation was. Then as soon as the lights come on they went through two more stop signs and the pursuit was on. So, the advice that it was a traffic violation that started the pursuit and then after a short time with Deputy Rhoads staying, getting the license number - he was able to get close enough - then it was a stolen car. Then that kind of changes it a little bit the pursuit.<sup>10</sup>

The Ombudsman also asked Chief Martin about exercising his authority to terminate his officer's participation in the pursuit.

MARTIN: You know, at this time that this pursuit started that we're talking about I was not aware that it was a stolen car until after the pursuit had started. And I don't believe that, uh, that my officer was aware that it was a stolen car. I think it was the deputy that may have got the license number, got close enough to get the license number and then report as a stolen car. And then, uh, my officer was low on fuel. And when I heard him going to end the pursuit about 6 miles north of town, uh, that saved me from possibly ending the pursuit here in just the next few minutes.<sup>11</sup>

The interview continued:

OMBUDSMAN: So, you were getting ready to pull the plug on Officer Kendall?

MARTIN: Yeah, I wouldn't let him go – if he was, in fact, if he had got up to the junction of [Highway] 96, and he advised of the speed they were going, I was going to terminate him because he's not familiar with that part of the county when he gets up to the north of the county.<sup>12</sup>

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<sup>10</sup> Martin Interview Transcript.

<sup>11</sup> Martin Interview Transcript.

<sup>12</sup> *Id.* at p. 4, l. 12-17



After reviewing the factors to consider in balancing “risk versus need to apprehend”, the Ombudsman concludes Officer Kendall’s actions at each stage of this pursuit were not unreasonable.

**WHETHER TAMA COUNTY DEPUTY RHOADS’, DEPUTY WRIGHT’S, AND RESERVE DEPUTY MALLORY’S ACTIONS COMPLIED WITH MANDATORY TAMA COUNTY SHERIFF’S OFFICE POLICIES/PROCEDURES**

The Ombudsman identified in the Tama policy five mandatory provisions pertinent to this pursuit. The provisions and the Ombudsman’s findings on each are as follows:

***A. REQUEST TO ASSIST AN OFFICER FROM ANOTHER JURISDICTION IN A PURSUIT***

The entire first paragraph of the policy section entitled Providing Aid to Other Jurisdictions Both Within and Outside the County states:

If a unit from another jurisdiction is engaged in a pursuit **and requests assistance** from the sheriff’s office, the **requesting** agency should advise Communications Center of the nature of the offense, location, and the description of the vehicle being pursued **before** personnel from the sheriff’s office join in the pursuit. [Emphasis added].

Toledo Police Officer Kendall did not specifically request assistance from the Tama County Sheriff’s Office. The Ombudsman asked Officer Kendall about this.

OMBUDSMAN: After he turned east then after running the stop sign at Grandview, what did he do?

Officer Bob Kendall (KENDALL): To the junction. Eastbound to the junction. Ran the stop sign there. Like I said before that’s a four-way stop. Uh, made a quick left-hand turn, northbound Highway 63. And accelerated very quickly.

OMBUDSMAN: OK. Uh, at this time you continued to pursue. What was the next thing you did?

KENDALL: I immediately got on the radio and advised the dispatcher that I was in a high-speed chase. And at that point it was determined that suspect vehicle was not going to stop.

OMBUDSMAN: That dispatch – that radio dispatch – is that strictly for the police or is that sheriff’s dispatch?

KENDALL: Sheriff’s dispatch. They dispatch police, fire, and ambulance.

OMBUDSMAN: And did you request assistance?

KENDALL: At that point I did not request assistance. However, assistance was given to me by Deputy Bruce Rhoads and Tama officer John Carr.

OMBUDSMAN: How did officer, Deputy Rhoads get involved?

KENDALL: Deputy Rhoads got involved – well, as he [the suspect] was going northbound 63, Deputy Rhoads was at the sheriff’s office at the time. And he must have heard it – that I had just engaged in a pursuit. And when we passed Highway 63 and State Street, he was stopped at the stop sign waiting to join in the pursuit.

The *General Orders* for the 911 Management Communications Center contains one paragraph related to duties during a pursuit.

Immediately start the call for service and update it as needed as officers and agencies become involved. Be sure to log pertinent information as officers or agencies relay them to you on the radio. Make notifications in tab #12 of this manual. If possible or when asked have units involved change to the same radio frequency. As necessary contact surrounding Counties and Iowa High (sic) Patrol communication centers.

Deputy Rhoads confirmed during his interview with the Ombudsman that he did not hear Officer Kendall request assistance.

Deputy Bruce Rhoads (RHOADS): I heard Officer Kendall say – I don’t remember his exact language – but say that he had a chase. And then I made a U-turn, activated my top lights to assist him.

Assistant Ombudsman, Rory Calloway (OMBUDSMAN): You said that you don’t recall his exact words that Officer Kendall used. Did you hear Officer Kendall request assistance in the pursuit?

RHOADS: No.

The Ombudsman finds sheriff’s office policy was not complied with when these deputies joined the pursuit without receiving a specific request for assistance.

***B. A DEPUTY WILL NOT JOIN IN A PURSUIT INITIATED BY ANOTHER JURISDICTION UNLESS AUTHORIZED BY THE ON-DUTY SUPERVISOR.***

The policy on interjurisdictional assistance also states, “A deputy who becomes aware of another agency’s pursuit shall not become involved unless specifically authorized by both the on-duty shift supervisor and personnel from the other law enforcement agency.” The policy adds, “In the event that the on-duty shift supervisor cannot be immediately contacted, the deputy may assist with the pursuit until such time as the on-duty shift supervisor can be contacted and a definitive decision on the assistance can be made.”

Dispatch personnel called Sheriff Kucera sometime after the pursuit began but there is no indication he directed the conduct of the deputies or expressly granted them permission to join in the pursuit. The on-duty supervisor that evening was Deputy Dan Wilkins. Deputy

Wilkins was in the residence where the search warrant Deputy Rhoads had obtained was to be served. He was on a portable radio.

In this case, according to Deputies Rhoads' and Wright's written statements provided to the Ombudsman, the on-duty shift supervisor was not available because he was out of radio contact. Based on the last rule, Deputy Rhoads was authorized by department policy to continue in the pursuit until a definitive decision could be made. However, there is no evidence that any attempt was made to contact Deputy Wilkins. The Ombudsman verified this when interviewing dispatch personnel.

OMBUDSMAN: You said that when you first got the call in from Officer Kendall that you called Deputy Wright because you knew that he was north of the pursuit. Do you recall who was the duty – supervising deputy that night?

Dispatcher Kelly Roy (ROY): We have a senior deputy. Usually he'd be the one with the lowest number. That was probably Mike Wright. I can't remember what his number was.

OMBUDSMAN: Do you recall if Dan Wilkins was on duty that night?

ROY: He was. But I believe he was in Montour on a search warrant.

OMBUDSMAN: Did you attempt to contact Deputy Wilkins at any time that night?

ROY: I don't remember.

OMBUDSMAN: You say that the senior deputy would have the lower 86 –

ROY: Correct.

OMBUDSMAN: number. The lower number. Uh, are you to contact – besides contacting the sheriff, are you to contact a senior deputy at any time during a pursuit?

ROY: When possible, I would.

OMBUDSMAN: And, again, did you attempt to contact Deputy Wilkins?

ROY: I can't remember specifically if I tried or if Carolyn tried or if somebody did try. But it seems that he was out of his car on that search warrant, if I remember correctly.

The Ombudsman also asked dispatcher Carolyn Flowers about supervisor contact.

OMBUDSMAN: Did anybody ever try to contact Dan Wilkins about the pursuit for any reason?

Carolyn Flowers (FLOWERS): Um, not that I remember. Not initially anyway. I don't remember at what point it was. He was busy on another incident.

OMBUDSMAN: Are you aware of any time in which a supervisor has to authorize a – or a senior deputy – authorize another deputy to engage in a pursuit?

FLOWERS: No.

According to Deputy Wright, if Deputy Wilkins could not be contacted, he was next in the line of command. As such, decisions regarding the conduct of the pursuit (how to continue or terminate) would have become his responsibility.<sup>13</sup> However, Deputy Wright was not made aware he was in a supervisory position (regarding this pursuit) and he was not asked for permission to continue the pursuit.

Based on this information, the Ombudsman finds Deputy Rhoads violated policy by not obtaining authorization from the on-duty supervisor to join in a pursuit initiated by another jurisdiction. In fact, at no time was an on-duty supervisor responsible for decision-making regarding this pursuit ever identified and informed of the pursuit.

**C. *A DEPUTY WILL NOT ENTER AN ONGOING PURSUIT UNLESS DIRECTLY ASSIGNED TO ASSIST BY THE ON-DUTY SHIFT SUPERVISOR.***

Since the Tama policy contains a separate section on joining in a pursuit initiated by another jurisdiction, this provision appears to apply to deputies joining in pursuits being conducted by another deputy or deputies. Therefore, this provision would not apply to Deputy Rhoads.

At no time did the other deputies involved in the pursuit request permission from a supervisor to join in the pursuit. When the Ombudsman interviewed Deputy Wright he said:

WRIGHT: It's my understanding that Deputy Wilkins was inside the house. Don't believe he was in place – that he was in a place that the portable did not pick up. Which is his handheld radio. He was not in his car. So, he was unaware of what was going on.

OMBUDSMAN: Would the responsibility then fall to the next highest officer?

WRIGHT: Yes.

OMBUDSMAN: And who would that be?

WRIGHT: Me.

The Ombudsman also asked:

OMBUDSMAN: You spoke that, uh, Deputy Wilkins was out of radio contact at that time. Were you aware that he was out of radio contact?

WRIGHT: No.

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<sup>13</sup> Wright Interview Transcript.

OMBUDSMAN: So, any time were you made aware that you were then supervising [the pursuit]?

WRIGHT: No.

The Ombudsman asked Dispatcher Kelly Roy about communicating with officers that are on portable radios.

OMBUDSMAN: When they're out – when a deputy is out of his car, uh, are they usually carrying portable radios to be contacted?

Kelly Roy (ROY): Most do.

OMBUDSMAN: Do you ever have trouble contacting a deputy that is on a portable radio?

ROY: Constantly.

OMBUDSMAN: Under what types of circumstances do you know that it is difficult to contact them on the portable?

ROY: The terrain. The weather, mostly. The kind of building they might be in.

In reviewing the audiotape of the pursuit radio transmissions, the Ombudsman did not hear any deputy request permission to join the pursuit or request a supervisor be contacted.

Reserve Deputy Mallory was not assigned to the pursuit. He joined on his own volition after hearing Officer Kendall's radio call and observing the pursuit vehicles pass in front of him.

While Deputy Wright was called by dispatch and informed a Toledo police officer was in a pursuit heading his way, he was not assigned to that pursuit and did not request permission to join in. Since Deputy Rhoads was involved in the pursuit when Deputy Wright engaged, this provision appears to apply to him.

The Ombudsman finds from this information that both Deputy Wright and Reserve Deputy Mallory violated this provision of the Tama policy.

***D. ADDITIONAL ANALYSIS ON POLICY REQUIREMENTS FOR INTERJURISDICTIONAL PURSUITS***

The Ombudsman concluded in sections A, B, and C that the deputies technically violated policy when they joined in the pursuit. However, the Ombudsman's analysis does not end there.

The Ombudsman may also determine whether agency action is unreasonable even though in accordance with law. The Ombudsman can determine not only whether policy had been adhered to, but also whether the policy itself is otherwise objectionable.

The officers in this case were consistent in their stated belief that assistance to another law enforcement officer should be given whenever possible.

The Ombudsman asked Deputy Rhoads whether he heard a request for assistance and whether a specific request is needed before a deputy can render assistance. The following statements were made in response:

OMBUDSMAN: What is your understanding of department policy regarding assisting in a pursuit?

RHOADS: Uh, I was told by my chief deputy to assist any agency when he started here in January I believe.

OMBUDSMAN: And who is the chief deputy?

RHOADS: Chief Deputy Ruopp.

OMBUDSMAN: And he informed you personally to assist any other agency, department --

RHOADS: Yes.

OMBUDSMAN: -- in a pursuit?

RHOADS: I'm sorry. At the time we were specifically discussing the Belle Plaine Police Department and their requests for assistance. And he told me that was his expectation.

OMBUDSMAN: To clarify what Chief Deputy Ruopp told you on his expectation -- was his expectation for you to assist when requested or whenever that you became aware of a pursuit?

RHOADS: This wasn't specifically to pursuits. This was to officer safety. Officers in need of assistance.

The interview continued:

OMBUDSMAN: Is it required that the other officer specifically request help?

RHOADS: No.

OMBUDSMAN: So when you heard Officer Kendall inform dispatch that he was in a pursuit, was it your understanding that he required assistance at that time?

RHOADS: Yes. Any officer in pursuit needs assistance.

OMBUDSMAN: And why is that?

RHOADS: To -- for the safety of the officer. To end the pursuit in the quickest and safest manner possible. And for the safety of the public.

The Ombudsman asked Officer Kendall, “You said that you didn’t request assistance at that time [when he first reported to dispatch that he was in a pursuit]. Would you have requested assistance at some point?” Officer Kendall responded, “Yes. I would have requested assistance. There was a lot of radio traffic. I, uh, called in the chase. It wasn’t too long after that – within a matter of not even a minute – that’s when Deputy Rhoads got on the radio and said he was going to come out and help.”

Reserve Deputy Mallory was also asked about this particular policy. He stated, “My understanding of the written department policy is if an agency other than the Tama County Sheriff’s Office requests assistance in a high-speed pursuit that they will ask for such assistance. It is commonly known that other officers will back other officers up without being requested.”

When Deputy Wright was asked about requests for assistance he made similar responses.

OMBUDSMAN: And again, Deputy Rhoads, did he make any requests for your assistance in this pursuit?

Deputy Michael Wright (WRIGHT): It’s a, uh, common practice that when you got an officer either in a pursuit or in a situation where he is going to need help it’s just automatic to assist him in any way you can. It’s not, you know, basically sit around and wait for someone to call you for help. If you know he’s going to need help then you should automatically assist him.

OMBUDSMAN: Department policy then is that if there is a pursuit and you are in help distance then – is the policy then that you assist without request?

WRIGHT: Pretty much, yes.

OMBUDSMAN: Is there a policy for helping another jurisdiction? Uh, in this case Toledo Police Department initiated the pursuit. Is there a policy regarding assisting that jurisdiction or agency?

WRIGHT: I don’t know if there’s a written one. I don’t recall if there’s a written one. It’s pretty much kind of a verbal where it’s just been passed on when one agency is calling for help then you assist.

The Ombudsman presented the same issue to Sheriff Kucera.

OMBUDSMAN: Officer Kendall initiated the pursuit in Toledo city limits based on his observation of traffic violations and according to statements that he informed dispatch that he was in pursuit. What is your understanding of the sheriff’s department’s, sheriff’s office’s responsibility in response to that communication?

Sheriff Kucera (KUCERA): When another agency is in pursuit of a vehicle?

OMBUDSMAN: Yes.

KUCERA: That would be given the circumstances of the location or at the time. There are several things that could come into play. Is to get a location. Whether they ask you for assistance. Whether you're right in the position to offer assistance without being asked. If it's obvious they are in need of assistance. Just a few I guess or at least some.

OMBUDSMAN: So, if another department requests assistance, and if you were available to do that, you would lend assistance?

KUCERA: Yes.

OMBUDSMAN: You stated that if it was obvious that they required or they needed assistance that you would offer assistance. Is that correct also?

KUCERA: Yes.

OMBUDSMAN: In this circumstance, in a pursuit, what would be the circumstances that would indicate that another law enforcement department needed assistance?

KUCERA: Just by the notification by the officer to the dispatch that he was involved in a pursuit. And, uh, obviously a pursuit is a vehicle attempting to flee from a peace officer.

The Ombudsman also discussed this issue with Dispatch Supervisor Carolyn Flowers and Dispatcher Kelly Roy.

OMBUDSMAN: Do you recall if Officer Kendall requested assistance that night?

Dispatch Supervisor Flowers (FLOWERS): Right away I don't remember if he requested it, uh, or if, you know, Kelly just told people on the radio because it, you know, we would assume – I mean we would always, you know, ask for assistance on a 10-80 [pursuit].

OMBUDSMAN: Is that something that the *General Orders* indicate to do?

FLOWERS: I don't know. I don't remember.

OMBUDSMAN: Why would you always, uh, go for assistance?

FLOWERS: Well, this person is running for some reason. You know, you don't know why. They could have a weapon. We don't know what the – what the reason is they're running. There has to be some reason. Because, you know, you or I wouldn't do that. So, you ask for assistance just because you don't know. So, I guess for the unknown.

Dispatcher Roy handled most of the radio communication with the officers involved in the pursuit.

OMBUDSMAN: You said that you immediately acknowledged his call then called other officers. Is that what the standing policy is to immediately call for other officers to assist?

Dispatcher Roy (ROY): If not to assist, so they will hold their menial radio traffic so that it doesn't interfere with the emergency at hand.



Dispatcher Roy was also asked:

OMBUDSMAN: Is there any time that you're aware of that a specific request for assistance is needed before one officer can assist another?

ROY: Not that I'm aware of.

Additionally the Ombudsman asked Coordinator and Communications Director Scott Bruns the following questions:

OMBUDSMAN: What's your understanding if a Toledo police officer calls in that he is in a pursuit? As far as whether or not a dispatcher is to, uh, find for him whether he requests assistance or not? Does he have to make a specific request for assistance?

Director Bruns (BRUNS): No, he doesn't have to necessarily make a specific request. But it is known that – and in the *General Orders*, that they [dispatchers] need to let everyone know who is on the air in the county what's going on.

OMBUDSMAN: And if a Tama Sheriff's deputy responds that he is going to assist, is there any understanding that authorization has to come from a supervisor before he can do that?

BRUNS: Not that – not to my knowledge.

The pursuit policy for the Toledo Police Department does not directly state that assistance from another agency (i.e. Tama County Sheriff's Office) is expected or required in all pursuits initiated by one of its officers. Looking at the policy as a whole the inference of this expectation is present. This inference is drawn from:

1. An officer must inform the sheriff's Communication Center whenever a pursuit is initiated.
2. Although the policy does not state when a pursuit will be terminated if Communications is able to contact the Chief of Police, the directions given for termination of a pursuit when the mayor is the contact person indicate severe restrictions on continuation of the pursuit without assistance.
  - a. If known that no County or State officers available to assist, the police officer will terminate pursuit immediately.
  - b. If, after ten minutes, it appears no assistance is available, the pursuit will terminate.

The Ombudsman clarified with the Chief Martin what he expects regarding assistance in a pursuit:

Chief Martin (MARTIN): Well, normally any time our department requests – or are in pursuit of any kind, it’s put on the air and other departments join.

OMBUDSMAN: So, it’s assumed that the county’s going to [assist] if they have officers in the area?

MARTIN: If there’s anybody close.

In order to clarify the Chief’s position on this the Ombudsman asked:

OMBUDSMAN: Do you think that the officers assume that they are to continue into it [the pursuit] until you terminate it?

MARTIN: No.

The Tama policy states that assistance in a pursuit initiated by another jurisdiction is provided **when requested**, yet all the officers involved in this pursuit indicated the actual practice of the department is to assist another law enforcement officer without specific request to do so [emphasis added]. Sheriff Kucera, is responsible for the content of the policies for his department and the policies should reflect clearly his philosophy and direct the actions of his officers. It is evident from Sheriff Kucera’s interview with the Ombudsman that he believes it is not necessary for an officer to make an express request for assistance before one of his deputies can render assistance if available.

The Ombudsman finds the current Tama County Sheriff’s Office pursuit policy is inconsistent with deputies’ practice and the sheriff’s expectations.

Finally, the Ombudsman concluded above that the sheriff’s deputies involved in this pursuit violated department policy because they did not wait for a formal request from the Toledo officer before assisting in the pursuit, were not assigned to the pursuit, or receive supervisory authorization. However, beyond making findings that an agency or its employee’s action(s) are per se violations of policy – not in strict conformity to the rules – the Ombudsman may also determine whether the action(s) are unreasonable. Under this standard of review the Ombudsman concludes the deputies’ decision to join in the pursuit was reasonable.

This conclusion is based on:

- The consistent understanding of the deputies in this pursuit regarding department practice is deputies will assist other law enforcement officers (within the department or from other jurisdictions) regardless of whether a specific request is made.
- Sheriff Kucera, told the Ombudsman he expected his deputies to assist.
- According to Deputy Rhoads, a supervisor, Chief Deputy Dave L. Ruopp, expressly instructed at least Deputy Rhoads that assistance without request was his expectation, even though this was contrary to written policy.

***E. AUTHORITY TO TERMINATE PURSUIT***

Tama County policy states, “The authority to terminate a vehicle pursuit shall be given to the employee operating the primary pursuit vehicle and any supervisory personnel.” The sheriff, as head of the department, is the highest ranking “supervisory personnel.”

Sheriff Kucera was called at his home sometime after the pursuit began. He was told a pursuit was in progress, northbound on Highway 63, and deputies were inquiring into availability of stop-sticks. Sheriff Kucera told dispatch to call Deputy Karr about the stop-sticks and he informed dispatch he would be out shortly.<sup>14</sup> Except for being told Deputy Rhoads was involved, the sheriff did not receive any other details regarding the pursuit at this time.<sup>15</sup>

Sheriff Kucera immediately left his house and got in his vehicle. While backing out of his driveway, he said he heard radio communications paging fire and ambulance services. The pursuit had already ended with the crash of the pursued vehicle.

The Ombudsman asked Sheriff Kucera about his role in the pursuit.

OMBUDSMAN: What was your understanding of the status of the pursuit when you were contacted?

KUCERA: The status was that they were northbound on the Toledo, uh, on Highway 63.

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<sup>14</sup> Sheriff Kucera’s written statement provided to the Ombudsman.

<sup>15</sup> Kucera Interview Transcript.

OMBUDSMAN: Were you informed of the speeds at which they were traveling?

KUCERA: I don't believe at that time that I was. No.

OMBUDSMAN: Were you informed of any techniques that had been used to try and stop the pursued vehicle?

KUCERA: No.

OMBUDSMAN: Do you have, or did you have, any supervisory responsibilities at that point regarding that pursuit?

KUCERA: Given the information that I had, and as brief as what I was given, I just informed them, to dispatch, that I would be out shortly. And would be basically responding to.

OMBUDSMAN: The decision to initiate a pursuit, is that at the discretion of the deputies?

KUCERA: It would be at the discretion of the officer, senior officer in the situation or circumstances.

OMBUDSMAN: The decision to terminate a pursuit, is that something that you would have responsibility for or authority to do at that time?

KUCERA: Uh, yes, I would have had authority to do that?

OMBUDSMAN: Under what circumstances would you terminate a pursuit that you were not involved with?

KUCERA: The, uh, having knowledge of or more information obviously as to the circumstances generated around it or what was taking place at the time.

Sheriff Kucera's written statement indicates he was called by Dispatch at approximately 2:00 A.M. His statement also says he left his home at approximately 2:00 A.M. The Ombudsman asked Dispatcher Roy when Sheriff Kucera was contacted. She said she actually contacted him twice. The first time, by telephone, sometime before the pursuit reached Deputy Wright, although she was not able to recall exactly when this call was made. Roy also said she contacted Sheriff Kucera a second time, but could not remember whether this was by telephone or on the radio. This second contact was made as the pursuit terminated with the crash of the suspect vehicle.

When the Ombudsman reviewed the audiotape of radio transmissions, Dispatcher Roy informs Deputy Rhoads that, "Dennis [Sheriff Kucera] thinks the closet one [set of stop-sticks] is Craig Karr in Dysart." This communication happened approximately five minutes into the pursuit and indicates that dispatch had in fact already been in communication with Sheriff Kucera.

The Ombudsman finds the pursuit policy is silent on the sheriff's authority to terminate pursuits. But logically, if inferior level supervisors can terminate a pursuit, Sheriff

Kucera, as head of the office has the authority to terminate the pursuit. Sheriff Kucera was initially given limited information regarding the nature of the pursuit. Sheriff Kucera left home and could at that point directly monitor the activity of the pursuit on his radio. However, by then the pursuit had already ended. Because there is no definitive evidence on when exactly Sheriff Kucera was first notified of the pursuit, and therefore no manner in which to evaluate how long he had to gather sufficient information to make an informed decision, the Ombudsman does not make a determination as to whether the sheriff failed to reasonably exercise his authority to terminate the pursuit.

***F. POLICY REFERENCE THE COMMUNICATIONS CENTER'S RESPONSIBILITY TO NOTIFY THE SHERIFF OR SENIOR SUPERVISOR***

Tama County pursuit policies, under the heading Communications Center Personnel's Responsibilities, states:

Immediately after receiving notice of a pursuit, the telecommunicator should advise all other officers to clear the frequency unless they have emergency radio traffic. The telecommunicator will then **immediately notify the on-duty shift supervisor and the most senior supervisor (sheriff), if available**, that a pursuit has been initiated. [Emphasis added].

According to Sheriff Kucera's statement he was notified by communications of the pursuit sometime within the last minute of the pursuit. Kucera's statement says "On date at approx. 2:00 A.M. I was notified by Tama County Dispatch by phone to my residence that officers were involved in a high-speed chase." In the next paragraph Kucera writes, "At approx. 02:00 A.M. I was leaving my residence . . . As I was backing out of my garage I heard the dispatch paging out Traer fire and ambulance."

However, as stated in the previous section, the evidence is that Sheriff Kucera had actually been contacted several minutes before the end of the pursuit. Dispatcher Kelly Roy was almost constantly in radio communication with one of the officers but did apparently make contact with Sheriff Kucera sometime before five minutes into the pursuit. Dispatcher Carolyn Flowers began computer input regarding specific actions taken during the pursuit and did also contact Chief Martin.

Based on this information, the Ombudsman finds the policy to immediately contact the sheriff was substantially complied with.

**WHETHER THE ACTIONS OF DEPUTY RHOADS, DEPUTY WRIGHT, AND RESERVE DEPUTY MALLORY WERE UNREASONABLE IN CONSIDERATION OF DISCRETIONARY/JUDGMENT POLICY ITEMS**

The Tama policy directs the officer to consider certain factors and circumstances in deciding whether to initiate, continue, or terminate a pursuit. The policy also contains a general “pursuit philosophy” statement.

Following are those policy provisions the Ombudsman found relevant to the decision making process of the officers involved in this pursuit.

***ASSUMPTION THAT A FELONY PURSUIT AUTHORIZES APPREHENSION OF THE SUSPECT “AT ALL COSTS”***

Tama policy admonishes a deputy, “The assumption that the commission of a felony constitutes automatic authorization for pursuit at all costs until the suspect’s apprehension **is not correct**, particularly when the suspect has not demonstrated potential for serious injury to the deputy or others.” [Emphasis in original] Based on statements made to the Ombudsman, the Ombudsman finds Deputy Rhoads had not made this incorrect assumption.

OMBUDSMAN: What about consideration of terminating the pursuit?

Deputy Rhoads (RHOADS): . . . Obviously it’s always a consideration. It’s something I’ve done on many occasions.

OMBUDSMAN: Many occasions. Can you give approximately how many high-speed pursuits that you’ve been involved with?

RHOADS: That I’ve been involved with?

OMBUDSMAN: Uh, huh.

RHOADS: Uh, that would be difficult to do since I was a Brooklyn officer – uh, maybe 15 or 20 and that’s an approximate number. Uh, could go either way.

OMBUDSMAN: When you terminated pursuits, uh, what was the reason for terminating them?

RHOADS: I’ve terminated – after this chase I sat and thought of pursuits I’ve terminated. I’ve terminated them for – I can think of several I’ve terminated because I knew it was just car loads of kids – out partying – catch them later. Sometimes I was able to catch them later -- sometime I was not. The reasons were not worthwhile to chase them. I can think of three pursuits I’ve terminated here in Tama County due to the fact they were misdemeanor traffic violations that was going to be the initiation of the stop and they were just driving too fast in the pursuit and no potential to get them stopped. I was the only deputy out. Uh, those are the reasons. There’s just absolutely no potential to get them stopped and too many people around.

OMBUDSMAN: In this incident, the pursuit initiated because of traffic – running stop sign and backing up in an intersection. If you had been aware that that was the basis for the pursuit, would have that have changed your decision to join the pursuit and/or terminate?

RHOADS: Would not have changed my position, decision to join the pursuit. Uh, probably not to terminate the pursuit either given the timing of them trying to ram my car, finding out the car was possibly stolen. Those would have all factored in to my decision and did factor into my decision.

Based on the statements of and interviews with Deputy Rhoads, Officer Kendall, and Reserve Deputy Mallory, the Ombudsman finds the suspect vehicle driver swerved toward Deputy Rhoads.

The Ombudsman concludes Deputy Rhoads, by considering several factors during the pursuit, conformed to sheriff's office policy and did not make an assumption the suspect vehicle was to be pursued "at all costs."

***ANALYSIS OF WHETHER DEPUTIES MADE UNREASONABLE DECISIONS DURING THE PURSUIT BASED ON FACTORS AND CONSIDERATIONS DETAILED IN THE TAMA COUNTY PURSUIT POLICY***

Tama policy calls for termination of a pursuit under several circumstances. Some of these require a weighing of risk versus desire to apprehend the suspect. Other policy items are specific factors to be considered by the pursuing officer.

The subsections that follow iterate the pertinent policy provisions followed by the Ombudsman's determination whether the deputies acted unreasonably during the pursuit.

**A. [A pursuit will be terminated when] The prevailing traffic, roadway, and environmental conditions indicate the futility of continued pursuit.**

Included in the reports submitted to the Ombudsman were weather station reports from several surrounding sites on the early morning of April 6, 2001. The weather conditions and road conditions were not adverse. Visibility was clear to at least a mile throughout the night. There was no precipitation on the roadway. Deputy Ruopp also made this observation when he arrived to investigate the accident.

According to the deputies during their interviews with the Ombudsman, there were only two other vehicles observed during the pursuit. Both of these vehicles were passed near

the beginning of the pursuit, just outside city limits. Both cars had pulled off the highway and onto the shoulder - presumably in response to the lights and sirens of the law enforcement vehicles.

The pursuit took place between 1:50 A.M. and 2:00 A.M., through a rural community and into open county road. Only two civilian vehicles were encountered. Based on these factors, the Ombudsman concludes it was reasonable to continue the pursuit.

**B. [A pursuit will be terminated when] The pursued vehicle's location is no longer known.**

Except for the brief moment before Deputy Rhoads topped the hill closest to the intersection of Highways 63 and 96, when Rhoads said he could no longer see even the taillights of the pursued vehicle, the location of the vehicle was known at all times during the pursuit.

The Ombudsman finds this policy provision was substantially complied with and concludes the deputies were reasonable in continuing the pursuit.

**C. [A pursuit will be terminated when] The suspect(s) identity has been established to the point that later apprehension can be accomplished, and there is no longer any need for immediate apprehension.**

According to their statements and interviews with the Ombudsman, none of the officers involved in this pursuit were able to see in the pursued vehicle clearly enough to determine how many occupied the car or to make an identification of the driver. Since the vehicle was reported stolen, obtaining the license number did not assist in identifying the driver.

Because there was no identification made, the Ombudsman concludes the deputies acted reasonably in continuing the pursuit based on this policy provision.



**D. [A pursuit will be terminated when] The pursuing officer knows, or is reasonably certain, that the fleeing vehicle is operated by a juvenile and the offense constitutes a misdemeanor or non-serious felony and the safety factors involved are obviously greater than the juvenile can cope with.**

The officers could not identify any of the occupants of the pursued vehicle nor determine their age. Based upon these factors the Ombudsman concludes the deputies acted reasonably in continuing the pursuit.

**E. [A pursuit will be terminated when] If, in the opinion of the pursuing deputy, on-duty shift supervisor, or senior supervisor, there is a clear and unreasonable danger to the deputy and other users of the highway created by the pursuit which outweighs the necessity for immediate apprehension.**

The danger versus need-to-apprehend weighing factor of this rule actually requires incorporating some of the other factors and considerations of this policy. In this case, as detailed above, application of none of the individual considerations such as environmental conditions and ability to apprehend the suspect later led to a determination this pursuit should be terminated.

However, this “weighing” rule is separate and was evaluated by the Ombudsman as such. In other words, this rule requires more than finding that any particular consideration for termination of the pursuit should have directed the officers to stop the chase, but whether under the totality of the circumstances the risk is greater than the perceived gain.

The Ombudsman considered the following:

1. None of the pursuit factors analyzed above in sections A through D is individually determinative in analyzing whether the officers were reasonable in continuing pursuit by consideration of whether the dangers posed outweighed the immediate need to apprehend. However, the Ombudsman noted the conclusion in each of these policy provisions was they did not call for termination of the pursuit.
2. The Ombudsman noted the absence of factors, other than speed of the vehicles, which raised the level of the risk in this pursuit. For the most part, the pursued vehicle dictates the speed of the pursuit. A law enforcement officer may be able to get the pursued vehicle to reduce its speed by slowing his pace, but unless the

pursued vehicle reacts by reducing speed the distance between the vehicles will increase. There was no indication during this pursuit that the pursued vehicle would slow down if it gained a greater lead on the pursuing law enforcement officers. To the contrary, as the pursuit continued, according to Deputy Rhoads' account, he was not able to match the speed of the suspect vehicle and gradually fell farther behind.

3. The National Institute of Justice conducted a survey (further analyzed later in this report) and found that both officers and members of the public focused on the seriousness of the offense committed by the suspect when supporting a pursuit. The second most important factor was the risk to the public. In this case, the vehicle was stolen (a felony), although that information was not known until after the pursuit had been initiated. The "need to apprehend" the suspect at this point significantly increased. Since the pursuit took place at 1:50 A.M. and primarily on a rural highway, the risk to the public was minimal.

Based on the above analysis, the Ombudsman cannot conclude it was unreasonable to continue the pursuit.

#### ***REASONABLENESS OF APPREHENSION TECHNIQUES USED DURING THIS PURSUIT***

The only apprehension technique attempted was a "rolling roadblock." Deputy Rhoads did inquire into the availability of stop-sticks, but this device was not available.

While the Tama County Sheriff's pursuit policy directs a deputy to not pull alongside a fleeing vehicle, this proscription applies to attempts to force the vehicle into an obstacle.

The policy states:

The deputy shall not cause deliberate physical contact between the patrol vehicle and the vehicle being pursued, nor shall the deputy pull alongside the fleeing vehicle in an attempt to force it into any obstacle, except during an extreme situation which necessitates and justifies the use of deadly force.

Deputy Rhoads said his intention was to pass the vehicle in order to set up a "rolling roadblock." The Tama County Sheriff's Office has a separate policy section entitled "Patrol Operations: Roadblocks." This policy section addresses fixed roadblocks and circle roadblocks. Both of these involved placing patrol vehicles, signs, and barriers on a roadway.

The policy does not address the technique of moving a patrol vehicle in front of a pursued vehicle and slowing down in order to force the pursued vehicle to also slow down.

Because the “rolling roadblock” attempted by Deputy Rhoads was not fully implemented, the Ombudsman does not make a determination on whether use of this technique was unreasonable. However, because this pursuit technique is one that is commonly considered, the Ombudsman recommends department policies address this topic.

## **ANALYSIS AND CONCLUSIONS REGARDING PURSUIT POLICIES**

The basic dilemma associated with high-speed police pursuit of fleeing suspects is deciding whether the benefits of potential apprehension outweigh the risks of endangering police officers, the public, and suspects in the chase. . . . On the one hand, too many restrictions placed on police use of pursuit could place the public at risk from dangerous individuals escaping apprehension. On the other hand, insufficient controls on police pursuit could result in needless accidents and injuries.

Geoffrey P. Alpert, Police Pursuit: Policies and Training, U.S. Department of Justice, May 1997

In order to conduct a thorough evaluation of pursuit policies, the Ombudsman researched articles from nationally based law enforcement associations, consulted with the instructor for Precision Driving School at the Iowa Law Enforcement Academy, obtained and reviewed a copy of the instructor's manual, reviewed the Iowa State Patrol pursuit policy and considered statistical information collected by the Iowa Department of Public Safety.

This information provided insight into why policies vary from jurisdiction to jurisdiction. It also provided background about how and why specific policy considerations are generated and gave the Ombudsman a benchmark for the conclusions and recommendations in this report.

### **COMPARISON OF THE 1989 MODEL POLICY AND THE 1996 SAMPLE POLICY**

In 1987, the International Association of Chiefs of Police (IACP) entered into a cooperative agreement with the U.S. Justice Department's Bureau of Justice Assistance to establish a National Law Enforcement Policy Center (Center). The Center combined research, opinions from experts, and practical field experience to create many model policies including one on pursuits adopted December 1, 1989. That policy was reevaluated November 30, 1990.

At the 1996 Annual Conference of IACP, a resolution was adopted on a new Sample Policy on Vehicular Pursuits. This new policy was a significant departure from the Model Policy published by the Center.

The 1996 IACP preamble resolution states the reasons for creating a new policy:

WHEREAS, police pursuits have become an increased focus of attention for public safety officials, the news media and the public at large; and

WHEREAS, an acceptable balance must be obtained between the capture of fleeing suspects and the responsibility of law enforcement to protect the general public from unnecessary risks; and

WHEREAS, there is no uniform reporting criteria or system in place to accurately account for all pursuits; and

WHEREAS, many agencies have excellent comprehensive policies in place while others have minimal or no policies at all dealing with pursuits; and

WHEREAS, some states have enacted serious penalties for consciously attempting to elude the police while others have not; and

WHEREAS, there is a need to adopt a generic "sample" policy that can serve as a minimum guideline for all agencies involved with pursuits. . . .

Following is a comparison of the 1989 Model Policy (Model) and the 1996 Sample Policy (Sample), along with comments by the Ombudsman comparing these with the Toledo and Tama County Policies.

1989 Model Policy	1996 Sample Policy
<b>I. PURPOSE</b> The purpose of this policy is to state the guidelines to be followed during vehicular pursuit.	<b>I. PURPOSE:</b> The purpose of this policy is to establish guidelines for making decisions with regard to vehicular pursuit.

Neither Toledo's nor Tama County's policy contains a purpose section. The Ombudsman asked Sheriff Kucera about his belief regarding the purpose of pursuit policies.

OMBUDSMAN: I had one statement on, when you wrote me before, and I believe that I have this correct, you said, 'my opinion of the policy', and I assume referring to the pursuit policy, 'is to be able to show justification and give direction as to what or why you are performing your duties as you are or have'. Can you clarify a little bit the statement of "to show justification"?

Sheriff Kucera: The – given the incident, given the obvious tragedy that had taken place obviously – my opinion was to look at the factors that were given to me from the officers that were involved and to look through our policy to see if I felt that there was a error – let's put it that way – that would have been obvious to the cause of the result of the outcome. And so giving justification as to why we were doing

it, uh, would be probably one reason as to whether you would continue or to terminate. Just for instance, this particular pursuit.

1989 Model Policy	1996 Sample Policy
<p><b>II. POLICY</b></p> <p>Vehicular pursuit of fleeing suspects presents a danger to the lives of the public, officers and suspects involved in the pursuit. It is the policy of this department to protect all persons' lives to the extent possible when enforcing the law. In addition, it is the responsibility of the department to assist officers in the safe performance of their duties. To effect these obligations, it shall be the policy of the department to narrowly regulate the manner in which vehicular pursuit is undertaken and performed.</p>	<p><b>II. POLICY:</b></p> <p>Vehicular pursuit of fleeing suspects can present a danger to the lives of the public, officers, and suspects involved in the pursuit. It is the responsibility of the agency to assist officers in the safe performance of their duties. To fulfill these obligations, it shall be the policy of this law enforcement agency to regulate the manner in which vehicular pursuits are undertaken and performed.</p>

The first noticeable difference is the Sample does not contain the sentence “protect all person’s lives **to the extent possible.**” [Emphasis added]. Additionally, the Model modifies “regulate” with “narrowly.” In a concept paper designed to accompany the Model, the policy is described as “relatively restrictive, particularly in prohibiting pursuits where the offense in question would not warrant an arrest.”

There are essentially three types of pursuit policies – Judgmental or Discretionary, Restrictive, and Discouraging. The concept paper defined these as:

- **Judgmental or Discretionary** – allowing officers to make all major decisions relating to initiation, tactics, and termination.
- **Restrictive** – placing certain restrictions on officers’ judgments and decisions.
- **Discouraging** – severely cautioning or discouraging any pursuit, except in the most extreme circumstances.

Based on these definitions, the Ombudsman believes the Toledo and Tama County policies fall in the “restrictive” category. Both set out guidelines and directions for officers making judgments regarding pursuits, do not limit the authority or responsibility for the

conduct of the pursuit with the officer, and do not set an “extreme circumstance” threshold for engaging in a pursuit.

1989 Model Policy	1996 Sample Policy
<p><b>III. DEFINITION</b></p> <p>A. Vehicular Pursuit: An active attempt by an officer in an authorized emergency vehicle to apprehend fleeing suspects who are attempting to avoid apprehension through evasive tactics.</p>	<p><b>III. DEFINITIONS:</b></p> <p>A. Vehicular Pursuit: An active attempt by an officer in an authorized emergency vehicle to apprehend a fleeing suspect who is actively attempting to elude the police.</p> <p>B. Authorized emergency vehicle: A vehicle of this agency equipped with operable emergency equipment as designated by state law.</p> <p>C. Primary unit: The police unit which initiates a pursuit or any unit which assumes control of the pursuit.</p> <p>D. Secondary unit: Any police vehicle which becomes involved as a backup to the primary unit and follows the primary unit at a safe distance</p>

The Sample’s additional definitions reflect extensive detail on pursuit tactics. Neither policy further defines terms used to specify the manner in which the suspect is attempting to avoid apprehension – “evasive tactics” (Model), “actively attempting” (Sample).

The Toledo policy’s definition of “pursuit” uses the phrase “or fail to respond to the pursuing officer’s signals to stop.” The Tama policy does not have a definition section.

1989 Model Policy	1996 Sample Policy
<p><b>A. Initiation of Pursuit</b></p> <p>1. The decision to initiate pursuit must be based on the pursuing officers conclusion that the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.</p>	<p><b>A. Initiation of pursuit:</b></p> <p>1. The decision to initiate pursuit must be based on the pursuing officer's conclusion that the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.</p>

<p>2. Any law enforcement officer in an authorized emergency vehicle may initiate a vehicular pursuit when ALL of the following criteria are met:</p> <ul style="list-style-type: none"> <li>a. The suspect exhibits the intention to avoid arrest by using a vehicle to flee apprehension for an alleged felony or misdemeanor that would normally require a full custody arrest;</li> <li>b. The suspect operating the vehicle refuses to stop at the direction of the officer; and</li> <li>c. The suspect, if allowed to flee, would present a danger to human life or cause serious injury.</li> </ul> <p>3. The pursuing officer shall consider the following factors in determining whether to initiate pursuit:</p> <ul style="list-style-type: none"> <li>a. The performance capabilities of the pursuit vehicle;</li> <li>b. The condition of the road surface upon which the pursuit is being conducted;</li> <li>c. The amount of vehicular and pedestrian traffic in the area; and</li> <li>d. Weather conditions.</li> </ul>	<p>2. Any law enforcement officer in an authorized emergency vehicle may initiate a vehicular pursuit when the suspect exhibits the intention to avoid apprehension by refusing to stop when properly directed to do so. Pursuit may also be justified if the officer reasonably believes that the suspect, if allowed to flee, would present a danger to human life or cause serious injury.</p> <p>3. In deciding whether to initiate pursuit, the officer shall take into consideration:</p> <ul style="list-style-type: none"> <li>a. road, weather and environmental conditions;</li> <li>b. Population density and vehicular and pedestrian traffic;</li> <li>c. The relative performance capabilities of the pursuit vehicle and the vehicle being pursued;</li> <li>d. The seriousness of the offense; and</li> <li>e. The presence of other persons in the police vehicle.</li> </ul>
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The first and third subsections of the Model and the Sample are similar. They differ in the second subsection regarding when an officer may initiate a pursuit. The Model is restrictive by establishing a three-part criterion, and all of the conditions must be met before an officer can initiate the pursuit.

The Model limits pursuits to offenses in which the suspect is normally subject to a full custody arrest. This would appear to eliminate pursuits based only on violation of minor traffic violations.<sup>16</sup> The Sample does not contain language limiting pursuits to specific levels

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<sup>16</sup> In Iowa, a citation is generally issued in these instances. However, an officer may arrest a driver on a simple misdemeanor traffic violation. Iowa Code Chapter 805; Iowa Code Section 321.485(1)(a). *See also, Knowles v. Iowa*, 525 U.S. 113 (1998).



of offense. It does instruct the officer to consider the seriousness of the offense in all stages of the pursuit.

Another difference between the Model and Sample is found in the following criteria statements:

*Model:* The suspect, if allowed to flee, **would present** a danger to human life or cause serious injury. [Emphasis added].

*Sample:* Pursuit may be justified if the officer **reasonably believes** that the suspect, if allowed to flee, **would present** a danger to human life or cause serious injury. [Emphasis added].

The addition of the phrase “reasonably believes” takes into account the officer’s perception of the circumstances.

Toledo’s policy does not separate factors for consideration by the officer into initiation, continuation, or termination. The policy states that in all of these phases of a pursuit the officer is to consider:

- The danger presented by the suspect.
- The probability of a later apprehension of the suspect.
- The safety of the public, the officers involved in the pursuit, and the individuals in the vehicle being pursued.

Tama County’s policy separates the factors an officer needs to consider when initiating a pursuit. These factors are practically identical to those in the Sample. The Tama policy adds that officers may be held “criminally and civilly responsible for negligent or wrongful actions.”

1989 Model Policy	1996 Sample Policy
<p><b>B. Pursuit Officer Responsibilities</b></p> <p>1. The pursuing officer shall immediately notify communications center personnel that a pursuit is underway. The officer shall provide communications personnel with</p>	<p><b>B. Pursuit Operations:</b></p> <p>1. All emergency vehicle operations shall be conducted in strict conformity with applicable traffic laws and regulations.</p> <p>2. Upon engaging in a pursuit, the pursuing</p>

<p>provide communications personnel with the following information:</p> <ol style="list-style-type: none"> <li>a. Unit identification;</li> <li>b. Location, speed and direction of travel of the fleeing vehicle;</li> <li>c. Description and license plate number, if known, of the fleeing vehicle;</li> <li>d. Number of occupants in the fleeing vehicle, and descriptions, where possible; and</li> <li>e. Reasons supporting the decision to pursue.</li> </ol> <p>2. Failure to provide this information to communications personnel may result in an immediate decision by a field supervisor assigned to monitor the pursuit to order its termination.</p> <p>3. The primary pursuit unit shall reduce the level of pursuit to that of support or backup unit where:</p> <ol style="list-style-type: none"> <li>a. The fleeing vehicle comes under the surveillance of an air unit; or</li> <li>b. Another vehicle has been assigned primary pursuit responsibility.</li> </ol> <p>4. Any primary or backup unit sustaining damage to, or failure of essential vehicular equipment during pursuit shall not be permitted to continue in the pursuit. The unit shall notify communications so that another unit may be assigned to the pursuit.</p>	<p>vehicle shall activate appropriate warning equipment.</p> <p>3. Upon engaging in pursuit, the officer shall notify communications of the location, direction and speed of the pursuit, the description of the pursued vehicle and the initial purpose of the stop. The officer shall keep communications updated on the pursuit. Communications personnel shall notify any available supervisor of the pursuit, clear the radio channel of non-emergency traffic, and relay necessary information to other officers and jurisdictions.</p> <p>4. When engaged in pursuit, officers shall not drive with reckless disregard for the safety of other road users.</p> <p>5. Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles, a primary and a secondary unit. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor.</p> <p>6. The primary pursuit unit shall become secondary when the fleeing vehicle comes under air surveillance or when another unit has been assigned primary responsibility.</p>
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Although numbering is different, the Model and the Sample contain similar language in this section. The emphasis is on gathering and forwarding information on the suspect and progress of the pursuit. The two policies also address the limitation on number of law enforcement vehicles to be involved in any pursuit and the designation of primary and secondary pursuit vehicles.

The Model policy emphasizes communication and supervisory responsibilities. The Sample gives more general guidance on communications and supervisory responsibility.

Toledo’s policy more closely follows the Model than the Sample. It provides the officer with general factors to consider in initiating, continuing, and terminating a pursuit. The remainder provides specific directives on limitation of pursuit when no assistance is available and limitations on apprehension techniques to use when authorized by a superior.

Tama’s policy closely approximates the Sample. This policy has decision-making content and places most of this responsibility with the pursuing officer. The policy has directives on supervisory authorization in some circumstances. When considering both the main pursuit policy and the separate policies for roadblocks and stop-sticks, the Tama policy, like the Sample, emphasizes the pursuit tactics.

1989 Model Policy	1996 Sample Policy
<p><b>C. Communications Center Responsibilities</b></p> <ol style="list-style-type: none"> <li>1. Upon notification that a pursuit is in progress, communications personnel shall immediately advise a field supervisor of essential information regarding the pursuit.</li> <li>2. Communications personnel shall carry out the following activities and responsibilities during the pursuit:               <ol style="list-style-type: none"> <li>a. Receive and record all incoming information on the pursuit and the pursued vehicle;</li> <li>b. Control all radio communications and clear the radio channels of all nonemergency calls;</li> <li>c. Obtain criminal record and vehicle checks of the suspects;</li> <li>d. Coordinate and dispatch backup assistance and air support units under the direction of the field supervisor; and</li> <li>e. Notify neighboring jurisdictions, where practical, when pursuit may extend into their locality.</li> </ol> </li> </ol>	<p><i>Sample Policy Does Not Contain A Section on Communications Responsibilities</i></p>

The Toledo policy details many communication issues and responsibilities. However, since Toledo coordinates communications through the 911 Emergency Management

Communications Center, the Toledo Police Department does not have direct control over the application of these communication policies. Toledo must rely on the 911 Emergency Management Communications Center actually doing what is expected and desired in these policies.

The communication section of Tama County’s pursuit policy sets out usual responsibilities for personnel when they receive notification of a pursuit. The policy does not speak to responsibilities when notice is from an officer from another jurisdiction.

1989 Model Policy	1996 Sample Policy
<p><b>D. Field Supervisor's Responsibilities During Vehicular Pursuit</b></p> <ol style="list-style-type: none"> <li>1. Upon notification that a vehicular pursuit incident is in progress, the field supervisor shall assume responsibility for the monitoring and control of the pursuit as it progresses.</li> <li>2. The field supervisor shall continuously review the incoming data to determine whether the pursuit should be continued or terminated.</li> <li>3. In controlling the pursuit incident, the field supervisor shall be responsible for coordination of the pursuit as follows:               <ol style="list-style-type: none"> <li>a. Directing pursuit vehicles or air support units into or out of the pursuit;</li> <li>b. Redesignation of primary, support or other backup vehicle responsibilities;</li> <li>c. Approval or disapproval, and coordination of pursuit tactics; and</li> <li>d. Approval or disapproval to leave jurisdiction to continue pursuit.</li> </ol> </li> <li>4. The field supervisor may approve and assign additional backup vehicles or air support units to assist the primary and backup pursuit vehicles based on an analysis of:               <ol style="list-style-type: none"> <li>a. The nature of the offense for which pursuit was initiated;</li> <li>b. The number of suspects and any known propensity for violence;</li> <li>c. The number of officers in the pursuit</li> </ol> </li> </ol>	<p><b>C. Supervisory Responsibilities:</b></p> <ol style="list-style-type: none"> <li>1. When made aware of a vehicular pursuit, the appropriate supervisor shall monitor incoming information, coordinate and direct activities as needed to ensure that proper procedures are used, and shall have the discretion to terminate the pursuit.</li> <li>2. Where possible, a supervisory officer shall respond to the location where a vehicle has been stopped following a pursuit.</li> </ol>

<p>vehicles;</p> <p>d. Any damage or injuries to the assigned primary and backup vehicle or officers;</p> <p>e. The number of officers necessary to make an arrest at the conclusion of the pursuit; and</p> <p>f. Any other clear and articulable facts that would warrant the increased hazards caused by numerous pursuit vehicles.</p>	
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Both policies cover supervisor authority to terminate a pursuit. Rather than call on the supervisor to monitor the pursuit and exercise authority to “override” the pursuit officer and terminate a pursuit when deemed appropriate, the Model policy effectively shifts the primary responsibility for the pursuit from the on-scene officer to a supervisor. The Model states the supervisor will not only monitor the pursuit but “**shall** assume responsibility for the monitoring **and control** of the pursuit as it progresses.” [Emphasis added].

The Toledo policy similarly “shifts responsibility” by limiting duration and tactics used in a pursuit without authorization from a superior. Shifting of responsibility also occurs through limitations placed on pursuits when assistance from a county or state officer is not available.

The Tama policy shares responsibility between the pursuing officer(s) and supervisor(s). It provides, “The authority to terminate a vehicle pursuit shall be given to the employee operating the pursuit vehicle and any supervisory personnel.”

Additionally, Tama policy states, “The primary unit may maintain pursuit as long as it is safe to do so, or until directed to terminate the pursuit by a supervisor.” Like the Model, Tama policy elaborates supervisory responsibilities for monitoring the pursuit, gathering information, coordination of additional units, and determinations and notifications needed in the event a roadblock is called for. The Tama policy clearly identifies the pursuing officer as the individual primarily responsible for the progress of the pursuit.

1989 Model Policy	1996 Sample Policy
<p><b>E. Traffic Regulations During Pursuit</b></p> <p>1. Each unit authorized to engage in vehicular pursuit shall be required to activate headlights and all emergency vehicle equipment prior to beginning pursuit.</p> <p>2. Officers engaged in pursuit shall at all times drive in a manner exercising reasonable care for the safety of themselves and all other persons and property within the pursuit area.</p> <p>3. Officers are permitted to suspend conformance with normal traffic regulations during pursuit as long as reasonable care is used when driving - in a manner not otherwise permitted, and the maneuver is reasonably necessary to gain control of the suspect.</p>	<p><i>Sample Policy Does Not Contain A Section on Traffic Regulation During Pursuit</i></p>

Iowa Code section 321.231 provides the statutory basis for exceptions to traffic laws for Iowa’s law enforcement officers. Tama policy states, “All emergency vehicle operations shall be conducted in strict accordance with existing statutes (sic).” The policy also informs the officers, “The apprehension of a non-dangerous felon shall be governed by Supreme Court decisions, state statutes and Department policies, procedures, and rules.”

What the Tama policy does not state are those specific statutes implicated in a pursuit and which court decisions are relevant to an officer’s actions during a pursuit. Instruction in pertinent Iowa law is included in the driving course at the law enforcement academy. If the text of the statute is not included in policy, formal instruction and training at the department level may help reinforce the department head’s confidence in officers’ awareness of the relevant laws.

Toledo policy does not refer to statutory requirements. While it may be assumed that law enforcement officers are to be aware of and abide by Iowa law, restatement, or at least reference to the applicable laws in policy provides clarity and reinforces adherence.

1989 Model Policy	1996 Sample Policy
<p><b>F. Pursuit Tactics</b></p> <ol style="list-style-type: none"> <li>1. Unless expressly authorized by a field supervisor, pursuit shall be limited to the assigned primary and backup vehicles. Officers are not otherwise permitted to join the pursuit team, or follow the pursuit on parallel streets.</li> <li>2. Officers may not intentionally use their vehicle to bump or ram the suspect's vehicle in order to force the vehicle to a stop or in a ditch.</li> <li>3. Departmental policy pertaining to use of deadly force shall be adhered to during the pursuit.</li> </ol>	<p><b>D. Pursuit Tactics:</b></p> <ol style="list-style-type: none"> <li>1. Officers shall not normally follow the pursuit on parallel streets unless authorized by a supervisor or when it is possible to conduct such an operation without unreasonable hazard to other vehicular or pedestrian traffic.</li> <li>2. When feasible, available patrol units having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by other than a marked patrol unit, such unit shall disengage when a marked unit becomes available.</li> <li>3. Motorcycles may be used for pursuit in exigent circumstances and when weather and related conditions allow. They shall disengage when support from marked patrol units becomes available.</li> <li>4. All intervention tactics short of deadly force such as spike strips, low speed tactical intervention techniques, and low speed channeling (with appropriate advance warning) should be used when it is possible to do so in safety and when the officers utilizing them have received appropriate training in their use.</li> <li>5. Decisions to discharge firearms at or from a moving vehicle, or to use roadblocks, shall be governed by this agency's use of force policy, and are prohibited if they present an unreasonable risk to others. They should first be authorized, whenever possible, by a supervisor.</li> <li>6. Once the pursued vehicle is stopped, officers shall utilize appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.</li> </ol>

The Sample provides substantial detail in its tactics section. Most of these guidelines deal with safety (to officers and public) and effective means to bring the pursuit to an end (apprehending the suspect).

The Model contrasts with the Sample in its prohibition against intentionally bumping or ramming the suspect vehicle. The Sample refers to “low speed tactical intervention techniques.” This technique is commonly referred to as a PIT maneuver. PIT stands for either Pursuit Intervention Technique or Precision Immobilization Tactic. The technique involves the pursuit officer “pushing” the rear end of the pursued vehicle, forcing the vehicle into a spin, usually resulting in the pursuing officer then being able to block the pursued vehicle.

The technique in the Sample is qualified as a “low speed” technique. The goal is to force the pursued vehicle into a spin. If attempted at a high-speed, the risk to the officer and the suspect could be unacceptable.

The Toledo policy does not refer to use of the PIT maneuver. It places significant limits on use of apprehension techniques – authorization from superiors is required and the officer is specifically prohibited from pulling in front of the suspect vehicle in an attempt to accomplish a rolling roadblock.

Tama’s policy states, “The deputy shall not cause deliberate physical contact between the patrol vehicle and the vehicle being pursued.” While the Sample policy encourages use of all tactics “short of deadly force,” Tama’s policy states that roadblocks are inherently dangerous and restricts their use.

The perceived danger in use of roadblocks is also reflected in the Toledo policy – “At no time will a Toledo police car block a roadway during a pursuit unless advised by the chief and then only if the pursued vehicle is left at least ¾ of the roadway.”

1989 Model Policy	1996 Sample Policy
<p><b>G. Termination of Pursuit</b></p> <p>1. A decision to terminate pursuit may be the most rational means of preserving the lives and property of both the public, and the officers and suspects engaged in pursuit.</p> <p><del>Pursuit may be terminated by the pursuing</del></p>	<p><b>E. Termination of the Pursuit:</b></p> <p>1. The primary pursuing unit shall continually re-evaluate and assess the pursuit situation including all of the initiating factors and terminate the pursuit whenever he or she reasonably believes the risks associated with</p>



<p>Pursuit may be terminated by the pursuing officer, the field supervisor or chief executive officer of the department.</p> <p>2. Pursuit shall be immediately terminated in any of the following circumstances:</p> <ul style="list-style-type: none"> <li>a. Weather or traffic conditions substantially increase the danger of pursuit beyond the worth of apprehending the suspect;</li> <li>b. The distance between the pursuit and fleeing vehicles is so great that further pursuit is futile; or</li> <li>c. The danger posed by continued pursuit to the public, the officers or the suspect is greater than the value of apprehending the suspect(s).</li> </ul> <p>3. The pursuing officer shall relay this information to communications personnel, along with any further information acquired which may assist in an arrest at a later date.</p>	<p>continued pursuit are greater than the public safety benefit of making an immediate apprehension.</p> <p>2. The pursuit may be terminated by the primary pursuit unit at any time.</p> <p>3. A supervisor may order the termination of a pursuit at any time.</p> <p>4. A pursuit may be terminated if the suspect's identity has been determined, immediate apprehension is not necessary to protect the public or officers, and apprehension at a later time is feasible.</p>
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In this section, the Model continues to use more directive terms and phrases such as “pursuit shall be immediately terminated.” The Sample provides guidance to the officer to continually re-evaluate the circumstances and weigh current risk associated with the pursuit against the risk to the public if the pursuit is terminated without apprehension of the suspect.

Both policies indicate, either directly or by inference, that termination of the pursuit may be the best course of action – especially if the suspect is identified and apprehension at a later time is possible.

Toledo policy does not have a separate section on termination of the pursuit. But like the Sample, it contains the directive for the pursuing officer to consider factors of danger presented by the suspect (alleged offense), chance of later apprehension, and the safety of all involved. This consideration is to be during all aspects of the pursuit – initiation, continuation, and termination.

The Tama policy discusses risk weighing in various forms in several sections of the policy. The Tama policy also has language that indicates not only directives but also a “philosophy” concerning pursuit termination. The policy states:

- No assignment shall be of such importance, and no task shall be expedited with such emphasis, that the principles of safety become secondary. There are no tasks in the Department of such importance that they justify the reckless disregard for the safety of innocent persons.
- The assumption that the commission of a felony constitutes automatic authorization for pursuit at all costs until the suspect’s apprehension is not correct, particularly when the suspect has not demonstrated potential for serious injury to the deputy or other.[Emphasis in original].
- The decision to abandon pursuit may be the most intelligent course of action.

1989 Model Policy	1996 Sample Policy
<p><b>H. Interjurisdictional Pursuits</b></p> <ol style="list-style-type: none"> <li>1. The pursuing officer shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction, or cross the state line.</li> <li>2. Pursuit into a bordering state shall conform with the department’s interjurisdictional pursuit agreement and state law.</li> </ol>	<p><b>F. Interjurisdictional Pursuits:</b></p> <ol style="list-style-type: none"> <li>1. The pursuing officer shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction or across the county or state line.</li> <li>2. Pursuit into a bordering state shall conform with the law of both states and any applicable inter-jurisdictional agreements.</li> <li>3. When a pursuit enters this jurisdiction, the action of officers shall be governed by the policy of the officers' own agency, specific inter-local agreements and state law as applicable.</li> </ol>

The Model provides minimal direction to the pursuing officer on interjurisdictional pursuits. It provides little assistance in the extant case involving a local police department and county jurisdictional pursuit. The Sample is more detailed and does reference “specific inter-local agreements.”

Neither Toledo nor Tama policy refers to inter-jurisdictional agreements. Both have sections indicating an expectation of inter-jurisdictional pursuits but specificity and consistency are lacking in this regard.

1989 Model Policy	1996 Sample Policy
<p><b>I. The field supervisor shall prepare a comprehensive analysis of the pursuit, and forward it to the chief executive officer of the agency.</b></p>	<p><b>G. After-Action Reporting.</b></p> <p>1. Whenever an officer engages in a pursuit, the officer shall file a written report on the appropriate form detailing the circumstances. This report shall be critiqued by the appropriate supervisor or supervisors to determine if policy has been complied with and to detect and correct any training deficiencies.</p> <p>2. The department shall periodically analyze police pursuit activity and identify any additions, deletions or modifications warranted in departmental pursuit procedures</p>

The Toledo policy neither directs that the officer write a post pursuit report nor that an evaluation be conducted by a supervisor regarding the actions taken in the pursuit.

Tama policy requires a written report or a supplement about the pursuit be made to an existing case. Tama policy details what is to be included in that report:

- Chronology of the pursuit.
- Decisions made.
- Reasons for those decisions.
- Disposition of the pursuit [how did it end].

Tama policy specifies supervisory review stating the “report shall be given to the supervisor and forwarded through the chain of command.”

1989 Model Policy	1996 Sample Policy
<p><b><i>Model Policy Does Not Contain A Section on Training</i></b></p>	<p><b>H. Training:</b></p> <p>Officers who drive police vehicles shall be given initial and periodic update training in the agency's pursuit policy and in safe driving tactics.</p>

Neither Toledo nor Tama pursuit policy refers to initial or periodic training.

1989 Model Policy	1996 Sample Policy
<p>This model policy is intended to serve as a guide for the police executive who is interested in formulating a written procedure to govern vehicular pursuit. The police executive is advised to refer to all federal, state and municipal statutes, ordinances, regulations, and judicial and administrative decisions to ensure that the policy he or she seeks to implement meets the unique needs of the jurisdiction.</p>	<p><b>NOTE:</b> This sample policy is intended to serve as a guide for the police executive who is interested in formulating a written procedure to govern vehicular pursuit. IACP recognizes that staffing, equipment, legal, and geographical considerations and contemporary community standards vary greatly among jurisdictions, and that no single policy will be appropriate for every jurisdiction. We have, however, attempted to outline the most critical factors that should be present in every pursuit policy, including the need for training, guidelines for initiating and terminating pursuits, the regulation of pursuit tactics, supervisory review or intervention, and reporting and critique of all pursuits.</p>

The Sample policy recognizes that “contemporary community standards vary greatly among jurisdictions.” Not only do community standards vary from jurisdiction to jurisdiction, over time public standards change. This is evident from the preamble which states “police pursuits have become an increased focus of attention for public safety officials, the news media and the public at large. . . .” The Sample policy specifically directs law enforcement supervisors to review and critique pursuit reports and executives to conduct update training in pursuit policies.

**CONCLUSIONS REGARDING POLICIES OF THE TOLEDO POLICE DEPARTMENT AND THE TAMA COUNTY SHERIFF’S OFFICE**

***COMPARISON TO MODEL AND SAMPLE POLICIES***

Chief Martin told the Ombudsman that Toledo’s policy was intended to be fairly restrictive in nature by being brief, limiting reference to various options available during a pursuit, and discouraging the officer, either expressly or by inference, from continuation of a pursuit without assistance from another agency.

Toledo's policy does not contain several of the provisions suggested in the Sample. The policy does not contain a general *Policy* statement. Inclusion of a *Policy* statement introducing the pursuit philosophy of the department would aid in its interpretation and application

The Toledo policy describes supervisory responsibilities in various situations. The policy combines topics on communications, provides for involvement by the mayor, and termination options. Separating these topics, as in the Sample policy, would provide needed clarity to the Toledo policy.

Tama's policy is more comprehensive and similar in format to the Sample policy. The only provisions absent in the Tama policy are sections for definitions and training.

#### ***UPDATING OF POLICIES***

Current Toledo policy was written in 1993, and the Tama policy was adopted in 1994. Neither has been amended or revised since.

Chief Martin told the Ombudsman that when he became chief in 1992 the department did not have any policy regarding pursuits. At that time the entire department policy manual consisted of only four pages. Chief Martin spent 26 years with the Iowa State Patrol prior to becoming Toledo's Chief of Police. He said he based his pursuit policy on the Iowa State Patrol policy.

Chief Martin also told the Ombudsman when asked about reviewing current policy in light of this pursuit, "Well, what I would do, what I would revise again – I would take a look again at the state patrol policy and see what changes they had made since the 9 years that I left the patrol. And see if there is something that would be better for our policy."

The current Tama policy became effective April 30, 1995. The sheriff at that time was Mike Richardson, whose signature appears on the order. Current Sheriff Kucera was elected in November 2000. When asked by the Ombudsman whether he reviewed the department's pursuit policy after he assumed office, Sheriff Kucera said he had not. The Ombudsman also asked:

OMBUDSMAN: As a result of the tragic end of this particular pursuit . . . Have you determined whether to make a review of the current policy?

KUCERA: To be quite honest with you, I haven't made that decision yet. [*Note – the Ombudsman interviewed Sheriff Kucera in August 2001, the pursuit was in April 2001*] Being in office ten months with the numerous responsibilities I've taken over, I haven't made it a primary decision as to how soon I will review all these policies and especially the pursuit one if it, uh, needs modification or what we need to do.

In a 1995 survey conducted by the National Institute of Justice, 91 percent of the responding agencies had written policies regarding pursuits. Many of these policies originated in the 1970's. Of these, 48 percent were modified within the last two years, and a vast majority of those (87 percent) became more restrictive. Since the adoption of the current policies, the Ombudsman believes it would be beneficial for the Toledo Police Department and the Tama County Sheriff's Office to review their own pursuit policy, in consideration of other model or sample policies, and to update the policy as appropriate.

#### ***CONSISTENCY IN POLICIES BETWEEN JURISDICTIONS***

The Ombudsman recognizes that in general each policy must be appropriate for that particular jurisdiction. Policy directives may differ depending upon a number of factors, including the size of the agency and jurisdiction it serves, the level of officers' experience with pursuits, and the location and proximity of the agency relative to other agencies.

Nevertheless, law enforcement agencies in overlapping or adjacent jurisdictions can expect to provide interjurisdictional assistance on occasions. For that reason, it is important for these agencies to work together to ensure consistency in policy and practice related to such interactions. The Ombudsman concludes the Toledo and Tama policies lack sufficient coordination.

## **ANALYSIS AND CONCLUSIONS REGARDING EDUCATION AND TRAINING OF OFFICERS INVOLVED IN PURSUIT**

The Ombudsman reviewed training materials for the Iowa Law Enforcement Academy's (ILEA) course on Precision Driving. While a great deal of the course is dedicated to physically driving the pursuit vehicle, there was substantial course material on decision making from initiation to termination of a pursuit. Much of this material is drawn from the Model and Sample policies. The course material also covers ethics and legal issues.

Officers usually attend this course only once in their career. None of the officers involved in this pursuit told the Ombudsman they had received additional training or refresher course work.

*Officer Kendall –*

OMBUDSMAN: We've referred to the policies several times. When was the last time that you reviewed the policy?

KENDALL: It's been a couple months ago actually. I can't tell you word for word what it says.

OMBUDSMAN: Do, uh, did you review it yourself or did you review it ---?

KENDALL: Oh, I reviewed it myself. I've looked at it several times. But the last time I looked at it was a couple months ago.

OMBUDSMAN: Sometime after the April 6<sup>th</sup>?

KENDALL: Yeah, I read it too before that time in April as well but it's been quite a while before then.

*Deputy Rhoads –*

OMBUDSMAN: When was the most recent time that you reviewed these [pursuit policies]?

RHOADS: Uh, I reviewed it when I met with Tama County's lawyer. I don't recall the month. It would have been after the pursuit.

OMBUDSMAN: Do you recall when would have been a time prior to the pursuit that you would have reviewed the policies?

RHOADS: When I was hired in 1999. September of 1999.

OMBUDSMAN: And were you just handed the policy book to review or was there a training session in policies?

RHOADS: I was given the policy book to review by then Sheriff Mike Richardson.

OMBUDSMAN: Has there been any occasion to review the policies with Sheriff Kucera?

RHOADS: No, I've not reviewed them with Sheriff Kucera.

OMBUDSMAN: Have you discussed the policies with any other deputies?

RHOADS: As – the high-speed chase policy?

OMBUDSMAN: Yes.

RHOADS: Not specifically.

*Reserve Deputy Mallory --*

OMBUDSMAN: And when was the last time that you reviewed those [pursuit policies]?

MALLORY: The last time? About a half hour ago.

OMBUDSMAN: And prior to that?

MALLORY: Oh, shortly after this incident.

OMBUDSMAN: And did you review those on your own volition or at the request of the sheriff?

MALLORY: I was curious to see – it was in the news media – uh, that the question if our pursuit policy had been followed. And I was curious on my behalf as to did we violate anything or not. And I read through it at that time. So, it was my own curiosity.

OMBUDSMAN: Prior to that do you – can you recall when you looked at these policies before then?

MALLORY: I had looked at it the two times when I started as a reserve deputy sheriff – probably November. And also when I started as a jail officer. I worked in the jail officer position for Tama County for about two and a half years prior. I looked at it then. And I also – I also started interning here when I was a junior in high school. I think they gave me the policy manual to read and understand it and know. So, it's been kind of in the back of my head ever since I originally read it.

OMBUDSMAN: Did you discuss these policies with any other officers or the sheriff at any time during your training?

MALLORY: During my training? No.

OMBUDSMAN: At any other time?

MALLORY: I don't believe so. No.

Most of the officers said they had been in few high-speed pursuits during their law enforcement career. With many individuals, skills and knowledge that are not regularly applied, practiced or refreshed may diminish over time.

None of the officers involved indicated they had been formally instructed in their respective departmental policies. Each indicated they had been made aware of the policies



and had reviewed the pursuit policies at some time prior to the April 6, 2001 pursuit. Formal instruction and review of departmental policies would help ensure officers' understanding of expectations and requirements, especially those involving discretionary actions.

The instruction provided by ILEA is comprehensive – both in driving technique and in policy considerations in initiating, continuing, and terminating pursuits. However, each jurisdiction has its own distinctive pursuit environment and policies should be designed to fit each department's needs. The evidence in this case shows no formal training or discussion of agency policies took place between officers, supervisors, and the department heads. Because there is no formal instruction or training at the department level, the Ombudsman concludes the overall training and education of these officers is inadequate.

## NATIONAL AND STATE STATISTICS REGARDING PURSUITS

Between October 1994 and May 1995, the National Institute of Justice (NIJ) conducted a survey of law enforcement policies and data collected from actual pursuits. The survey contacted 737 agencies – 436 provided usable data, 284 said they did not collect such information, and 17 declined to participate. Iowa does not maintain a pursuit data collection system. The NIJ survey found fewer than 5 percent of the states represented in the survey have mandated data collections programs.

The last section of the Iowa Department of Public Safety's (DPS) policy on Motor Vehicle Pursuit says, "The Plans, Training and Research Bureau will maintain a database of incident reports on pursuits and will periodically report statistical information on pursuits to the Division Directors and Commissioner." When the Ombudsman requested these statistics from Larry Sauer, Bureau Chief for DPS Professional Responsibility Bureau, he responded:

At the present time there is no specific information collected by the Department of Public Safety regarding pursuits or regulations that require such. Any information gathered presently is through a narrative provided by an involved trooper or a supervisor who has knowledge of the incident. . . . A database is in the development stages to gather more complete and meaningful information. . . . The Plans, Training and Research Bureau no longer exists within DPS which was tasked with keeping the above information.

Bureau Chief Sauer provided a graph [Appendix J] compiled from officers' report narratives between 1996 and 2000. The graph show:

- Total number of pursuits,
- Patrol car damage numbers,
- Damage to other vehicles,
- Injuries to officers,
- And injuries to others.
- Initial reason for the pursuit.
- Other reasons to apprehend the suspect either developed during the pursuit or discovered during the pursuit.

The Ombudsman prepared the following table from the data in the graph. The data does not indicate a direct association between the number of pursuits and the number of injuries or vehicle damage reports. For example, in 1996 there were 66 pursuits resulting in damage to patrol cars 17 times, damage to other vehicles 41 times, injuries to officers 4 times, and injuries to other 14 times. In 2000 there were only 4 less pursuits reported. But in that year 7 patrol cars were damaged, 27 other vehicles damaged, 2 officers injured and 5 others reported injured.

	<b>1996</b>	<b>% of Total Pursuits</b>	<b>2000</b>	<b>% of Total Pursuits</b>	<b>% Change from 1996 to 2000</b>
<b>Total pursuits</b>	66		62		-6.1%
<b>Patrol Car Damage</b>	17	25.7%	7	11.3%	-58.8%
<b>Other Vehicle Damage</b>	41	62.1%	27	43.5%	-34.1%
<b>Injury to Officer</b>	4	6.0%	2	3.2%	-50%
<b>Injury to Others</b>	14	21.2%	5	8.1%	-64.3%

In the year 2000 there were 6 percent fewer pursuits than 1996. However, there was a decrease in injury and damage reports of between five and ten times this amount. The Ombudsman is unable to draw any conclusion based on the information obtained from these figures.

Without additional statistical detail and information from other law enforcement agencies in the state concerning the circumstances of the pursuits, the information currently being collected does not significantly assist in the evaluation of pursuits or the formulation of pursuit policies. To be of value in evaluating pursuit policies, the statistics need to include (but not limited to) data on the following topics:

- Other offenses alleged against or committed by the pursued driver discovered after the pursuit was terminated.
- How the pursuit was terminated.

- Why the pursuit was terminated.
- Length of time and distance of the pursuit.
- Number of law enforcement vehicles involved.
- Conditions of the pursuit (road surface, urban or rural, weather).
- Whether the pursuit involved more than one jurisdiction.

## RECOMMENDATIONS

### **The Ombudsman recommends:**

#### **1. The State Establish a Data Collection System on Pursuits by All Law Enforcement Entities in the State.**

A logical place for the establishment of this system would be with the Department of Public Safety. The data collected should be sufficiently complete to evaluate such issues as:

1. Offense or other reason for initial decision to stop the vehicle.
2. Reason for pursuit initiation.
3. Location of pursuit.
  - i. Where it began.
  - ii. Route of the pursuit.
  - iii. Where terminated.
4. Jurisdiction initiating the pursuit (local, county, state).
5. Other jurisdictions involved.
6. Conditions of the pursuit.
  - i. Time.
  - ii. Road conditions.
  - iii. Visibility.
  - iv. Traffic.
7. Apprehension techniques used during the pursuit.
  - i. Description.
  - ii. Result of using the technique.
8. Damage and injury statistics.
9. Ultimate offense suspect charged with (or alleged).
  - i. Whether offense prior to pursuit.

ii. Or, as a result of the pursuit (i.e. eluding).

## **2. The Toledo Police Chief and the Tama County Sheriff Review and Amend Current Pursuit Policies**

The current Tama County Sheriff's Office pursuit policy concerning interjurisdictional assistance is inconsistent with the sheriff's expectation and the deputies' practice – specifically in regard to the requirements that a request for assistance be made and supervisory authorization be obtained before a deputy provides assistance. Therefore, the Ombudsman recommends that Sheriff Kucera review and amend the policy to reflect what he wants the policy to be, and ensure that practice is in compliance and consistent with the policy.

The Ombudsman recommends Sheriff Kucera include provisions for “rolling roadblocks” in the Tama County Sheriff's Office Roadblock Policy.

The Toledo policy is not clear as to whether Police Chief Martin expects available Tama County Deputies and State Patrol Officers to assist in *all* pursuits initiated by Toledo Police, or only when such assistance is requested by his officers. The Ombudsman recommends Chief Martin clarify his expectation concerning assistance from other jurisdictions. The Ombudsman further recommends Chief Martin review and revise the pursuit policy to clarify the specific communications his officers are required to make to the 911 Emergency Management Communications Center.

Prior to amending the provisions in their policies pertaining to interjurisdictional assistance, the Ombudsman recommends Chief Martin and Sheriff Kucera confer and coordinate on those provisions to ensure consistency and mutual understanding of their expectations. The Ombudsman also recommends they consult with regional and national law enforcement associations before making any amendments to policy.

## **3. Toledo Police Department's and Tama County Sheriff's Office Pursuit Policies Be Forwarded to the 911 Emergency Management Communications Center**

The Ombudsman recommends that any modifications of the Toledo and Tama pursuit policies be shared with the Director of the 911 Emergency Management Communications

Center.<sup>17</sup> The Chief and Sheriff should also meet with the Director to discuss possible modification of the Center's *General Orders* to clearly coordinate with the Toledo and Tama policies. The Ombudsman recognizes the Tama County 911 Emergency Management Board (Board) must approve any changes in policy for the Communications Center.

**4. The Toledo Police Chief and the Tama County Sheriff Take Into Consideration the IACP's 1996 Sample Policy and Any Other Relevant Model Policies in Their Reviews**

**5. Toledo Police Chief and the Tama County Sheriff Periodically Review Their Pursuit Policies with All Personnel**

The Ombudsman found no formal instruction or review of policies was conducted in either the Toledo Police Department or the Tama County Sheriff's Office.

**6. The Tama County Sheriff Contact All Local Law Enforcement Departments To Coordinate Policies on Interjurisdictional Pursuits**

For the same reasons that the Ombudsman recommended coordination between the Tama County Sheriff's Office and the Toledo Police Department, the Ombudsman recommends Sheriff Kucera contact each law enforcement agency with which an interjurisdictional pursuit could reasonably be anticipated to ensure coordination of pursuit policies. This includes all agencies within Tama County, adjacent counties, and the Iowa State Patrol.

**7. After a Pursuit, the Officer(s) Involved Debrief with appropriate supervisory personnel**

The Ombudsman recommends this debriefing should evaluate whether all mandatory pursuit policies were followed and include a review of all discretionary decisions made. Include an analysis of relevant variables impacting the pursuit and its outcome.

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<sup>17</sup> The Communication Center (Dispatch) formerly was a division of the sheriff's office. In 1988, the Iowa Legislature enacted Chapter 34A, *Enhanced 911 Emergency Telephone Systems*. According to Communications Director Scott Bruns, the transition from sheriff's dispatch to Tama County 911 Emergency Management Communications Center took place between October 2000 and July/August 2001. Under Chapter 34A the Communications Center is "operated under government management and control for the public benefit."

A Concept Paper on the 1989 Model Policy suggests the following be addressed in the debriefing:

- o What was the reason for the pursuit?
- o What were the conditions of the pursuit (e.g., traffic condition(s), time of day, vehicle speed(s), number of officers involved, number of vehicles involved, etc.)?
- o During the pursuit, did the actions of the involved officer(s) conform to established department policy?
- o Were there any exceptions to the policy? If so, what were they and why did they occur?
- o Was any action taken against the suspect vehicle? If so, what circumstances necessitated the use of this action?
- o If personnel and/or vehicles from other agencies assisted in the pursuit, how many personnel and vehicles responded and what role(s) did the assisting agencies have in the pursuit?
- o Based on the information compiled for this report, did the reporting supervisors find that the pursuit was handled properly or should it have been handled differently?

The Concept Paper further suggests developing standard reporting forms for this pursuit review, and if completed by other than the chief executive officer of the agency, the report be forwarded to this executive to determine whether:

- o The pursuit was necessary and within department policy.
- o There are training needs to be considered.
- o Any policy changes need to be considered.



<b>APPENDIX</b>	<b>CONTENT</b>
<b>A</b>	Toledo PD Pursuit Policy
<b>B</b>	Tama County Pursuit Policy
<b>C</b>	Tama County Roadblock Policy
<b>D</b>	Tama County Stop Sticks Policy
<b>E</b>	DPS Pursuit Policy
<b>F</b>	IACP 1996 Sample Policy
<b>G</b>	IACP 1989 Model Policy
<b>H</b>	Pictures
<b>I</b>	Map
<b>J</b>	DPS Stats Graph
<b>K</b>	DPS Technical Report
<b>L</b>	911 Comm. Center – General Orders

# APPENDIX A

## TOLEDO POLICE DEPARTMENT PURSUIT POLICY

# COPY

TOLEDO POLICE DEPARTMENT

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### II-1 PURSUIT DRIVING

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A. POLICY REGARDING PURSUIT DRIVING-Officers pursuing violators and suspected violators will consider the following:

1. The danger presented by the suspect
2. The probability of a later apprehension of the suspect
3. The safety of the public, the officers involved in the pursuit, and the individuals in the vehicle being pursued.

These factors will govern the initiation, continuation, and termination of pursuits.

B. DEFINITION OF A PURSUIT-A "PURSUIT" is an active attempt by a peace officer in an authorized emergency vehicle to apprehend one or more people in a moving motor vehicle who attempt to avoid apprehension or fail to respond to the pursuing officer's signals to stop.

### C. NOTIFICATION OF A PURSUIT

1. If you initiate a pursuit, you will immediately notify the Tama County Sheriff's Communications of the following:

- A. The reason for the pursuit
- B. A description of the vehicle and its occupant(s)
- C. The location, direction of travel, speed, and any other critical information.

2. Immediately upon receiving notification of a pursuit, the Tama County Sheriff's Radio Control Room will notify the Chief of Police and if unable to contact said chief the following rules will apply:

- A. Notify the Mayor if the pursuit involves other than a traffic violation or misdemeanor pursuit.
- B. If a serious or a felony pursuit is being initiated, you will only continue the pursuit at a safe distance until a County or State Peace Officer can continue the pursuit and if it is known that no other county or state car will be in a position to continue the pursuit, the pursuit will be discontinued immediately unless advised by the chief or the Mayor to continue pursuit.

TOLEDO POLICE DEPARTMENT

C. The pursuit will be discontinued after 10 minutes if it appears no help will be available from the County or State in the 10 minute time span.

D. The supervisory officer may order the termination of the pursuit at any time.

D. JOINING IN A PURSUIT

1. If you become aware of a pursuit in progress in your vicinity and you are able to assist in the pursuit, immediately notify the Tama County radio dispatcher.

2. The dispatcher will immediately notify the chief if said pursuit appears to be coming into the City of Toledo.

3. You will only join in a pursuit if authorized by the chief or mayor and only if the participation is likely to:

A. Assist in the apprehension or identification of the vehicle being pursued or its occupants, and/or

B. Increase the safety of the public or officers.

E. APPREHENSION TECHNIQUES

1. The chief, mayor, or authorized supervisory officer may order the use of the following tactics to apprehend a pursued vehicle if customary methods or signals have failed:

A. "BOXING-IN" or "ROLLING ROADBLOCK" which involve maneuvering two or more officers' vehicles so that they are behind or beside the vehicle being pursued, in order to force the pursued vehicle to stop.

B. At no time will the officer pull in front of the pursued vehicle while on a rolling roadblock.


C. At no time will a Toledo police car block a roadway during a pursuit unless advised by the chief and then only if the pursued vehicle is left at least 3/4 of the roadway.

F. PROCEDURES TO FOLLOW AFTER A PURSUIT

1. If the officer who initiated the pursuit is not present when the pursued violator is apprehended, that officer will go to the scene of the apprehension, unless otherwise directed by the chief or supervisory officer in charge.

# APPENDIX B

## TAMA COUNTY SHERIFF'S OFFICE PURSUIT POLICY

TAMA COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURE MANUAL	
CATEGORY: LAW ENFORCEMENT OPERATIONS	NO.
DIRECTIVE: GENERAL ORDER	
SUBJECT: PATROL OPERATIONS PURSUIT DRIVING	NO. PAGES: 10
EFFECTIVE: 4-30-94	REPLACES:
BY ORDER OF:   ----- MIKE RICHARDSON, SHERIFF TAMA COUNTY, IOWA	

### INTRODUCTION:

Pursuit driving is one of the most dangerous tasks a law enforcement officer may perform, as it could result in death or injury. The seriousness of the possible outcome commands the officer to weigh many factors before initiating or continuing the pursuit of a vehicle.

In order to diminish the likelihood of a pursuit, the officer intending to stop a vehicle should, when practical, be within close proximity prior to activating the emergency lights and siren.

### POLICY:

All emergency vehicle operations shall be conducted in strict accordance with existing statues. The pursuing deputy and supervisory personnel shall weigh the seriousness of the violator's offense or suspected crime against the potential for death or injury and the duration and overall distance which may be travelled if the pursuit continues.

The assumption that the commission of a felony constitutes automatic authorization for pursuit at all costs until the suspect's apprehension is not correct, particularly when the suspect has not demonstrated potential for serious injury to the

deputy or others. The apprehension of a non-dangerous felon shall be governed by Supreme Court decisions, state statutes and Departmental policies, procedures, and rules.

A law violator shall be apprehended whenever feasible. A deputy shall, however, terminate involvement in a pursuit whenever the risks to the safety of all concerned outweighs the danger to the community if the suspect is not apprehended.

All personnel operating county vehicles shall exercise due regard for the safety of all persons. No assignment shall be of such importance, and no task shall be expedited with such emphasis, that the principles of safety become secondary. There are no tasks in the Department of such importance that they justify the reckless disregard for the safety of innocent persons. Personnel will be held strictly accountable for any act displaying a reckless disregard for the safety of others.

**RULE:**

**EQUIPMENT USAGE OF VEHICLES ENGAGED IN PURSUIT**

Only county vehicles which are equipped with both visual emergency lighting equipment (red lights) and audible emergency equipment (siren) will engage in a vehicle pursuit. While engaged in a vehicle pursuit, deputies will utilize both visual emergency lighting equipment and audible emergency equipment at all times.

**NUMBER OF DEPARTMENT VEHICLES ALLOWED IN A PURSUIT**

Only those vehicles which are directly involved in an active vehicle pursuit (chase vehicles), the supervisor, and other law enforcement vehicles specifically authorized by the supervisor, shall engage in a vehicle pursuit.

**SHOOTING FROM A PURSUING VEHICLE**

Under no circumstances shall a deputy discharge a firearm from a moving vehicle.

**TERMINATION OF PURSUIT**

The authority to terminate a vehicle pursuit shall be given to the employee operating the primary pursuit vehicle and any supervisory personnel.

## VEHICLE PURSUIT REPORTING

In all cases of vehicle pursuit, a complete and detailed incident report shall be made explaining the full details of the vehicle pursuit and activities resulting from the pursuit. A report shall be filed by each deputy who operated a vehicle and was directly involved in the active pursuit of the suspect vehicle. said report shall be given to the supervisor and forwarded through the chain of command to the Sheriff.

### PROCEDURE:

#### PURSUIT DRIVING

##### Initiation of Pursuit

The decision to begin, responsibility to continue, and method of pursuit rests primarily with the individual deputy involved. Although the law does not prevent the deputy from using emergency speeds while engaged in a pursuit, it does hold him or her criminally and civilly responsible for negligent or wrongful actions.

Employees must exercise sound judgment and carefully consider the seriousness of the offense and the possible consequences and safety of the citizens whose protection is their responsibility.

Only vehicles equipped with audio and visual emergency equipment are to enter into a pursuit. The following factors must be considered:

- \* Seriousness of the offense;
- \* Possibility of apprehension;
- \* Condition of the roadway and amount of vehicular and pedestrian traffic;
- \* Weather conditions;
- \* Availability of assistance;
- \* Mechanical condition of the patrol vehicle; and
- \* Deputy's emergency driving skills

### Primary Unit's Responsibilities

At the onset of a pursuit, the deputy shall notify the Communications Center of the following:

- \* Unit identification;
- \* Location, speed, and direction of travel;
- \* Vehicle description, including license number, if known;
- \* Specific reason for the pursuit, including known laws violated;
- \* Number of vehicle occupants, if known; and
- \* Traffic conditions.

During the pursuit the deputy shall continue to report the location, direction of travel, and other pertinent information. If there are two deputies in the pursuing patrol vehicle, the passenger should operate the radio.

Failure to provide the above information may be cause for the on-duty shift supervisor to order termination of the pursuit.

### Termination of Pursuit

The primary unit may maintain pursuit as long as it is safe to do so, or until directed to terminate the pursuit by a supervisor. Pursuing deputies and their supervisors must continually question whether the seriousness of the crime justifies continuing the pursuit. **The decision to abandon pursuit may be the most intelligent course of action.**

The pursuit shall be terminated under any of the following circumstances:

- \* If, in the opinion of the pursuing deputy, on-duty shift supervisor, or senior supervisor, there is a clear and unreasonable danger to the deputy and other users of the highway created by the pursuit which outweighs the necessity for immediate apprehension.
- \* The prevailing traffic, roadway, and environmental conditions indicate the futility of continued pursuit.
- \* The pursued vehicle's location is no longer known.

- \* The suspect(s) identity has been established to the point that later apprehension can be accomplished, and there is no longer any need for immediate apprehension.
- \* The pursuing officer knows, or is reasonably certain, that the fleeing vehicle is operated by a juvenile and the offense constitutes a misdemeanor or a non-serious felony and the safety factors involved are obviously greater than a juvenile can cope with

The termination of a pursuit does not prohibit following the pursued vehicle at a safe speed or remaining in the area to reinstate pursuit if the opportunity and conditions permit.

#### Traffic Regulations During Pursuit

Deputies engaged in pursuit shall at all times drive in a manner exercising reasonable care for the safety of themselves and all other persons and property within the pursuit area.

When approaching intersections, especially those controlled by signs, signals, or other traffic control devices, the pursuing deputy shall:

- \* Reduce speed and prepare to stop.
- \* Enter the intersection only when safe and at a reduced speed, making certain that all operators of cross-street vehicles are aware of his or her presence.
- \* Resume pursuit speed only when safe to do so. When using emergency lights and siren, the deputy is requesting the right-of-way and does not have the absolute right to disregard a sign or other traffic control device.

#### Pursuit Tactics

The deputy shall not cause deliberate physical contact between the patrol vehicle and the vehicle being pursued, nor shall the deputy pull alongside the fleeing vehicle in an attempt to force it into any obstacle, except during an extreme situation which necessitates and justifies the use of deadly force.

Should the pursuit leave the roadway, the pursuing deputy must carefully consider whether or not the seriousness of the offense outweighs the risk to his or her safety and the potential damage to



the sheriff vehicle and/or private property. In this instance, the on-duty shift supervisor should strongly consider summoning additional units to form a perimeter.

If a suspect abandons the vehicle and proceeds on foot, the pursuing deputy shall immediately inform the Communication Center. The deputy must then decide whether the pursuit will be continued on foot, or if a canine unit should be requested and either event the deputy shall radio the location, direction of travel, description of the suspect, and other pertinent information.

Any primary or backup unit sustaining damage to, or failure of essential vehicular equipment during pursuit shall not be permitted to continue in the pursuit. The unit shall notify communications so that another unit may be assigned to the pursuit.

#### Roadblock Implementation in Conjunction with Vehicle Pursuit

Due to the inherent dangers associated with its implementation, the use of a roadblock in conjunction with vehicle pursuit shall be severely restricted.

Upon notification of a vehicle pursuit situation which may warrant the use of a roadblock, the on-duty shift supervisor and/or a senior supervising officer should evaluate all information to determine if the use of deadly force would be authorized. If circumstances warrant, a senior supervisor and/or the on-duty shift supervisor may order the activation of a roadblock and make appropriate modifications to any existing plan.

A shift supervisor should, if possible, assume command at the scene of the roadblock. If the circle system is used or if the shift supervisor is unable to reach the scene of the roadblock prior to implementation, he or she should assign a specific deputy or deputies to assume command of the roadblock.

#### Supervisory Responsibilities

Supervisory personnel will monitor, coordinate, and limit the number of vehicles involved in a pursuit, as well as the length of the pursuit.

Supervisory personnel are reminded that the decision to terminate a pursuit may be the most intelligent course of action. Supervisors must weigh the seriousness of the offense against the safety of all concerned. If it is later determined by the Sheriff

that a pursuit clearly should have been terminated yet was allowed to continue, the initiating deputy, on-duty shift supervisor, and senior supervisor involved may face disciplinary action.

The on-duty shift supervisor will be responsible for the following:

- \* Monitoring radio traffic at the onset of the pursuit;
- \* Obtaining information from the pursuing officer, including the location, speed, specific offense involved, license number, vehicle description, direction of travel, traffic and weather conditions, number of occupants, and whether or not emergency warning equipment is activated;
- \* Determining whether or not the pursuit should continue or be terminated;
- \* Redesignation of primary, support, or other backup vehicle responsibilities;
- \* Determining the number and extent to which additional units should be involved;
- \* Coordinating the actions of additional units involved, if any;
- \* Determining the necessity of roadblocks;
- \* Approval or disapproval for pursuit and/or backup vehicles to leave jurisdiction to continue pursuit;
- \* Assuring that sufficient patrol strength is maintained within the county for routine and other calls for service;
- \* Determining whether or not other agencies should be notified; and
- \* Correcting any improper assignments and/or misuse of Department personnel.

If personnel from this Department are in pursuit in another jurisdiction, the on-duty shift supervisor shall ensure that the agencies involved are notified and shall specify whether the notification is a request for assistance or merely a courtesy notification with no participation desired.

#### Assisting Unit's Responsibilities

A deputy will not enter an ongoing pursuit unless directly assigned to assist by the on-duty shift supervisor.

Assistance will be coordinated by the on-duty shift supervisor. The primary unit will be advised of the identity and location of backup units authorized to assist.

The active pursuit will normally involve not more than three units: the primary unit and one or two backup units. If more assistance is specifically requested, the amount will be determined by:

- \* The nature of the offense;
- \* The number of suspects and any known propensity for violence;
- \* Whether or not the participating units have more than one deputy;
- \* Any damage or injuries to the assigned primary and backup vehicles or deputies;
- \* The number of deputies necessary to make an arrest at the conclusion of the pursuit; and
- \* Other clear and articulated facts which would warrant the increased hazard.

Unless expressly authorized by the on-duty supervisor or a senior supervisor, pursuit shall be limited to the assigned primary and backup vehicles. All other units will remain aware of the direction and progress of the pursuit but shall not actively participate.

The assisting unit shall be operated in a safe manner and at the direction of the shift or field supervisor.

The assisting unit will avoid intersecting the path of an oncoming high speed vehicle.

If the primary unit becomes disabled, the assisting unit will become the primary unit, should it be determined that the pursuit should be continued. The Communications Center personnel will advise the on-duty supervisor and other units that a new backup unit is needed, and the next unit to join the pursuit will be designated the backup unit.

#### Communications Center Personnel's Responsibilities

Immediately after receiving notice of a pursuit, the telecommunicator should advise all other officers to clear the frequency unless they have emergency radio traffic. The telecommunicator will then immediately notify the on-duty shift

supervisor and the most senior supervisor (sheriff), if available, that a pursuit has been initiated.

The telecommunicator's responsibilities also include:

- \* Performing relevant record and motor vehicle checks;
- \* notifying other agencies by telephone if so directed by the on-duty shift supervisor; and
- \* Performing regular dispatching duties.

The telecommunicator's not responsible for relaying radio traffic to pursuit vehicles.

#### Providing Aid to Other Jurisdictions Both Within and Outside the County

If a unit from another jurisdiction is engaged in a pursuit and requests assistance from the sheriff's office, the requesting agency should advise the Communications Center of the nature of the offense, location, and the description of the vehicle being pursued before personnel from the sheriff's office join in the pursuit.

A deputy who becomes aware of another agency's pursuit shall not become involved unless specifically authorized by both the on-duty shift supervisor and personnel from the other law enforcement agency.

In the event that the on-duty shift supervisor cannot be immediately contacted, the deputy may assist with the pursuit until such time as the on-duty shift supervisor can be contacted and a definitive decision on the assistance can be made.

#### Reports to be Submitted

For every incident involving a pursuit, a case will be initiated or a supplement written to an existing case. The case will normally be assigned to the deputy initiating the pursuit. The on-duty shift supervisor and each deputy who operated a Department vehicle and was directly involved in the active pursuit of the suspect vehicle will each submit a supplement.

The report will include a detailed account of the chronology of the pursuit, decisions made, reasons for those decisions, and the disposition of the pursuit.


All reports will be submitted by the end of the employee's tour of duty, unless extenuating circumstances exist.

THIS DIRECTIVE IS TO BE USED IN CONJUNCTION WITH ALL RELEVANT EXISTING DEPARTMENTAL POLICIES, PROCEDURES, RULES, AND REGULATIONS.

F:\COMMON\PURSUIT  
3/94

# APPENDIX C

## TAMA COUNTY SHERIFF'S OFFICE ROADBLOCK POLICY

TAMA COUNTY SHERIFF'S OFFICE POLICY AND PROCEDURE MANUAL	
CATEGORY: LAW ENFORCEMENT OPERATIONS	NO.
DIRECTIVE: GENERAL ORDER	
SUBJECT: PATROL OPERATIONS ROADBLOCKS	NO. PAGES: 5
EFFECTIVE: 3/28/94	REPLACES:
BY ORDER OF:   ----- MIKE RICHARDSON, SHERIFF TAMA COUNTY, IOWA	

### INTRODUCTION:

While roadblocks are necessary at certain times to apprehend persons fleeing from a crime scene or attempting to evade arrest, the agency utilizing the roadblock must do so in an effective and well-disciplined manner or it will not only fail to achieve its intended purpose, but will also arouse unfavorable public opinion and may expose the agency to civil or criminal liability.

Roadblock operations must be preplanned to the extent possible, because time does not permit adequate deployment on any other basis. Deputies must be trained in roadblock techniques and be properly equipped to set them. The types and strategic placement of blockades must be determined in the planning stage. In addition, the individuals who have the authority to implement and cancel the roadblock should be clearly identified.

Many other factors must be considered, including the number of deputies available for assignment to the blockade. The decision to activate a roadblock plan should be based on:

- \* The seriousness of the crime;
- \* Sufficient information and descriptions of wanted persons and vehicles; and
- \* The elapsed time between the criminal act and its discovery.

**PURPOSE:**

The purpose of the directive is to establish guidelines for using roadblocks in emergency situations.

**POLICY:**

Roadblocks shall not be implemented without the expressed approval of supervisory officers. Fixed or circle-system roadblocks may be utilized as a necessary and acceptable police tactic in emergency situations, and once implemented should be monitored continually to ensure that proper procedures are followed.

**RULE:**

**ROADBLOCK IMPLEMENTATION**

The use of a roadblock must be authorized by a supervisor before its implementation. The use of a roadblock must be directly associated with the seriousness of the crime for which the suspect is wanted. The roadblock must be clearly visible and provide adequate warning to allow the pursued vehicle to come to a safe stop.

**USE OF FIREARMS AT A ROADBLOCK**

Firearms may be made ready for use at a roadblock but shall not be fired unless to return fire or when the use of deadly force has been authorized.

**PROCEDURE:**

**ROADBLOCKS**

**ROADBLOCK IMPLEMENTATION**

Upon notification of a situation which may warrant the use of a roadblock, the on-duty shift supervisor and senior supervising officer should evaluate all information to determine if just cause exists for the implementation of a roadblock. If circumstances warrant, the on-duty shift supervisor may order the activation of a roadblock and make appropriate modifications to any existing plan.

A shift supervisor should, if possible, assume command at the scene of the roadblock. If the circle system is used or if the shift supervisor is unable to reach the scene of the roadblock prior to implementation, he or she should assign a specific deputy or deputies to assume command of the roadblock.

Roadblocks used in conjunction with vehicle pursuit are to be implemented only upon the authorization of the on-duty supervisor

and senior supervising officer and then, only when the use of deadly force would be authorized. Deputies are advised to examine "Pursuit Driving" for further information regarding the implementation of a roadblock during a vehicle pursuit.

### FIXED ROADBLOCKS

Equipment for fixed roadblocks should be stored at a predetermined point, easily accessible to the deputies setting the roadblocks. Barricades used for fixed roadblocks should consist of strong, well-marked structures, augmented by blockade markers, flares and reflectors, warning signs, and may include the strategic positioning of patrol cars on the roadway itself.

### CIRCLE SYSTEM

The circle system is designed to completely contain the suspect in a given area; every possible escape avenue is blocked. All traffic is stopped and each motorist is thoroughly investigated. The location of blocking points is determined by using the crime scene as the center and drawing a circle on a map. The radius of the circle is determined by the estimated time lapse between the commission of the crime and the establishment of the roadblock. Some units are dispatched to blocking points and others to patrol inside the circle.

The inner circle is the area immediately surrounding the crime scene and is speedily blocked, thus forcing the suspect into the roadblock, onto back roads, or into sparsely populated areas where the suspect's actions will arouse suspicion and where the suspect may be observed more easily. Restricting the use of major highways curtails the easy blending with traffic upon which the suspect depends. Units cruise inside the circle and investigate all reports regarding the suspect.

An outer circle is set up to apprehend the suspect if the suspect penetrates the inner circle. The outer circle is usually several miles larger in diameter than the inner circle and the blocking points are on principal highways and intersections. Units are assigned to patrol between the two circles. Air craft, if available, are useful in checking back roads, rough terrain, and isolated areas.

### GENERAL BLOCKING TECHNIQUES

The general position of the patrol vehicle is at a forty-five (45) degree angle to the traffic flow. In this position the deputy can both observe and maintain mobility, two of the greatest assets in this situation. In instances when an extensive check of vehicles would cause interference with traffic flow, it is more desirable to slow traffic to a speed which enables the deputy to check passing vehicles and occupants without bringing them to a complete stop.



Also, there may be locations where the terrain does not readily permit a complete stop.

No person shall be allowed to remain inside a vehicle used to block the roadway. The deputy shall remain mobile and allow an avenue of escape should the suspect attempt to drive through the roadblock.

#### TWO-LANE ROADWAY BLOCKING TECHNIQUES

To stop traffic traveling only in one direction on a two-lane road, the patrol vehicle should be parked at a forty-five (45) degree angle to the traffic flow, partially on the roadway, blocking the lane used by the traffic to be stopped. The normal speed of traffic on the highway will determine the placement of warning signs and devices. In placing signs ahead of the roadblock, consideration must be given not only to stopping distances, including the reaction and braking time, but also to strategic location, retaining the element of surprise and reducing the probability of a turn-around. Lettering on the signs should be large enough to be read from a distance. In darkness the signs should be illuminated.

A stop sign should be placed at the roadblock point. Red lights should be placed at the side of the roadway. Flares, signs, obstructions, lights, properly positioned vehicles, and appropriate armaments will enhance the safety of the roadblock. At night the deputy investigating stopped vehicles should stay off the road and out of oncoming headlights. There should be sufficient illumination from another light source for the deputy to be recognizable. Once a car has stopped, the deputy should approach the driver's side from the left rear of the vehicle, not by walking straight out from the side of the road or in front of the stopped vehicle.

While the deputy is checking the vehicle, a second deputy should take a position on the opposite side of the patrol car, using the engine of the car as a shield, and keeping the entire area covered. If a third deputy is present at the roadblock point, the advantage of natural cover on the opposite side of the road should be taken, even with the sheriff car, and out of the firing line of the second deputy.

Light traffic can be stopped in both directions with this system. However, in heavy traffic it is necessary to set up this blocking procedure on both sides of the road. The second block should be approximately seventy-five (75) yards away and in sight of the first roadblock.

#### MULTI-LANE ROADWAY BLOCKING TECHNIQUES

The blockade of one side of a multi-lane highway is basically the

same as a blockade on a one or two-lane roadway. A major difference is the placement of warning signs. Because of greater traffic speed, the signs must be placed further ahead to allow time for a safe stop. In placing the signs, the deputy should allow for

a traffic backup. Since the road is multi-lane, at least two such signs must be placed on both sides of the roadway. Flares and signs should be arranged to funnel traffic into one or more lanes.

TRAFFIC SAFETY CHECKPOINTS EXEMPT

This chapter does not apply to those types of roadblocks which are implemented for the purposes of traffic safety checkpoints or other such activities.

THIS DIRECTIVE IS TO BE USED IN CONJUNCTION WITH ALL RELEVANT EXISTING DEPARTMENTAL POLICIES, PROCEDURES, RULES, AND REGULATIONS.

# APPENDIX D

## TAMA COUNTY SHERIFF'S OFFICE STOP STICKS POLICY

*Read & Pass along  
Sign off on last  
Page*

### *Policy on Stop Sticks*

**EFFECTIVE DATE:** December 1, 1999

**OBJECTIVE:**

Stop Sticks are used to aid Deputies, in high speed pursuits. The use of Stop Sticks can assist deputies in stopping a high speed pursuit before it risks the life and property of others. The first and foremost consideration is the safety of the Deputy and the public.

**PROCEDURES:**

1. Deputies should be well versed on the pursuit policy of the Tama County Sheriff's Office. This policy is in your, policy and procedure manual under **SECTION O**.
2. No Deputy **SHALL** deploy Stop Sticks unless they are trained in their use as recommended by the manufacture and to the satisfaction of the training personnel.
3. The use of the Stop Sticks **SHALL** be cleared through the Sheriff or the Senior Deputy on duty if time allows.
4. The Deputy deploying the Stop Stick **SHALL** notify the pursuing deputy, dispatcher and assisting officers of the location of deployment. The pursuing Deputy and the assisting officers in the pursuit **SHALL** be at a safe distance as to not drive over the Stop Sticks.
5. The location for the deployment of the Stop Sticks should give the pursuing Deputies a visual on the unit making the deployment. This vehicle **SHALL** have all red lights on.
6. Deploying Deputy **SHALL** be in a safe location so they can see the pursuit as it approaches the Stop Sticks.
7. Once the fleeing vehicle hits the Stop Sticks they are to be removed as quickly as possible so pursuing vehicles do not hit them.
8. **AT NO TIME SHOULD THE DEPLOYING DEPUTY WRAP THE REEL CORD AROUND ANY PART OF HIS BODY.**

9. Stop Sticks **SHALL NOT** be used on two or three-wheel vehicles.

10. Stop Sticks **SHALL NOT** be used on curves

11. Stop Sticks, if at all possible should not be used at intersections.

12. Stop Sticks **SHALL** be deployed on hard surfaced roads only,  
(blacktop & concrete).

13. After the Stop Stick has been hit it will be replaced before they are used again. If they were not hit they can be reused. This replacement is the responsibility of the Deputy that deployed them.

**REMEMBER SAFETY FIRST**

11/28/99

# APPENDIX E

## DEPARTMENT OF PUBLIC SAFETY PURSUIT POLICY

### 6-7 Motor Vehicle Pursuit

#### A. Purpose

To provide guidelines for the pursuit and apprehension of suspects.

#### B. Definition

A "pursuit" is an active attempt by a peace officer in an authorized emergency vehicle to apprehend one or more people in a moving motor vehicle who attempt to avoid apprehension or fail to respond to an officer's signal to stop.

#### C. Policy

Vehicular pursuit of fleeing suspects presents a risk of danger to the lives of the public, officers, and the suspects involved in the pursuit. It is the primary goal of this Department to provide reasonable protection for the safety of all persons when enforcing the law. In addition, it is the responsibility of the Department to assist officers in the safe performance of their duties. To effect these obligations, it shall be the policy of the Department to establish guidelines for vehicular pursuits.

1. The intent of this policy is to provide general guidelines for pursuit that will help ensure apprehensions within the reasonable limits of safety, while recognizing the officer's responsibility to enforce the law.

2. A pursuit is justified when, in the officer's judgment, the officer believes the risk to the public is greater without an apprehension when compared to the risk of pursuit.

3. An officer's decision to pursue, not to pursue, or terminate a pursuit is discretionary.

#### D. Considerations

1. In exercising this discretion, the officer shall consider the following:

- a. Seriousness of the offense(s).
- b. Area in which the pursuit is occurring.
- c. The current volume of vehicle or pedestrian traffic.
- d. Capability of officer's vehicle.
- e. Current weather and road surface conditions.
- f. Available assistance.
- g. The probability of subsequent apprehension of the pursued person.

E. Primary Pursuing Officer's Responsibilities

1. If, after weighing the preceding considerations it is the officer's belief that pursuit is justified, then the Primary Pursuing Officer (P. P. O.) will switch to the LEA radio frequency and notify the appropriate Communications Center of the pursuit and provide the following information:

- a. Speed, location, and direction of the pursuit.
- b. Description of the pursued vehicle, license plate number, and a description of the occupants, if observed.
- c. Reason the pursuit is continuing, including the original offense(s).

2. The P. P. O. will activate the vehicle's headlights and all emergency lights and siren throughout the pursuit.

3. If the officer is unable to comply with both 1 and 2 above, pursuit should only be continued if the officer believes serious imminent harm to the public will occur without apprehension.

4. The Communications Specialist will contact the officer's appropriate supervisor as soon as reasonably possible and provide the supervisor the preceding information.

a. The P. P. O. bears the operational authority for the pursuit, unless relieved by a supervisor. This authority pertains to field operation of the pursuit only and is subordinate to the command of a supervisor at all times.

b. The P. P. O. will continue to provide updated information to the Communications Center throughout the pursuit.

5. If the P. P. O. is driving an unmarked vehicle, the officer shall allow a marked Iowa State Patrol vehicle to become the P. P. O. as soon as this can be completed safely.

F. Backup Officers' Responsibilities

D. P. S. officers will refrain from becoming involved in a "train of police vehicles" during a pursuit. No more than three D. P. S. vehicles shall be assigned to a single pursuit, unless in the discretion of the supervisor, additional vehicles are required.

1. The primary backup officer, upon joining the pursuit, shall immediately notify the Communications Center of their identity. The backup officer shall immediately assume radio communications, allowing the primary pursuing officer to devote full attention to pursuit driving.

2. The backup officer should maintain a safe distance behind the P. P. O., but close enough to render assistance, if and when needed. A "safe" distance is the officer's decision, exercising officer discretion.

3. If the P. P. O.'s vehicle becomes disabled, or loses position, the backup officer will become the P. P. O. If so, the backup officer should immediately notify the Communications Center. The Communications Center will then advise the supervisor and other officers that a new backup officer is needed and the next officer to join the pursuit will become the backup officer.

4. Other officers in the area may assist by monitoring the pursuit from parallel roadways and thus be in position to assist in stopping the fleeing vehicle.

5. An officer's response to a request from another agency to assist in a pursuit is discretionary. When exercising this

discretion, the officer shall consider the factors in Section "D" of this policy.

#### G. Supervisor Responsibilities

1. It is the primary responsibility of the supervisor to coordinate the pursuit through effective communication. It is not necessary that the supervisor be physically present, or directly involved in the pursuit.

2. The supervisor upon being notified of a pursuit shall verify the following:

- a. The information in "E" (P. P. O. Responsibilities).
- b. Aircraft assistance has been requested, if feasible.
- c. The proper radio frequency is being utilized.
- d. All affected agencies have been notified.

3. The supervisor shall coordinate all officers involved, including methods to stop the fleeing vehicle.

4. The supervisor may reverse a P. P. O.'s decision to pursue, not to pursue, or continue the pursuit.

5. If property damage, or personal injury accident, or use of deadly force occurs during the pursuit, the closest supervisor to the pursuit termination location should proceed to the scene.

6. Should a supervisor initiate a pursuit, the supervisor should relinquish the pursuit to another officer as soon as reasonably practical and assume a supervisory role.

#### H. Communications Specialists Responsibilities

The Communications Specialists shall:

1. Coordinate all communications activities while maintaining radio discipline.

2. Be responsible for receiving and recording all information on the pursuit and the pursued vehicle.

3. Obtain criminal records, vehicle registration, and wanted checks of the vehicle and suspect(s).

4. Coordinate and dispatch backup assistance and air support under the direction of the field supervisor.

5. Notify neighboring jurisdictions, where practical, when pursuit may extend into their jurisdiction.

#### I. Stopping the Fleeing Violator

1. Like the decision to pursue, the decision on how or when to stop the violator is discretionary with the P. P. O. and/or supervisor. Any tactic contemplated should take into consideration all the factors surrounding the incident, including safety of the public, officers, and the pursued.

2. Methods of stopping a fleeing violator should be employed from the least dangerous progressively to the most dangerous.

a. Alternatives to forcefully stopping the violator include:

\* Identifying the suspect and apprehending the suspect later.

\* Park a Patrol car on the shoulder with emergency lights activated and the officer positioned in a safe location directing the suspect to stop.

b. Use of roadblocks

\* Roadblocks for stopping fleeing violators may be used by officers as outlined in this policy.

\* A roadblock is a deliberate obstruction of traffic on a highway at one or more selected points installed for a specific purpose. It does not necessarily mean a complete stoppage of traffic or a complete blockage of the roadway.

\* There are several types of roadblocks that may be used. Selection of what roadblocks are appropriate under the circumstances is discretionary with the officer. This is a decision the P. O. and/or the supervisor must make, depending upon the facts of each pursuit.

\* The roadblock should be established in an area that gives all traffic reasonable time to identify the roadblock and stop a safe distance away.

c. Types of roadblocks

\* Fusees or traffic cones. Fusees or traffic cones may be placed across a roadway in an effort to stop or funnel the fleeing vehicle onto the shoulder to stop.

\* The officer setting up this roadblock should not expect the suspect to stop and should assume a position of safety. The Patrol car should be off the roadway with the emergency lights activated and in a reasonably safe position, ready to assume immediate pursuit assistance.

(1) Stationary roadblocks

" This is a partial blockage of the roadway using an unoccupied Patrol car with emergency lights on. The roadway will not be barricaded or occupied by privately owned vehicles. The roadblock will be constructed in such a manner to leave a route through the area and designed so that it will be necessary to proceed slowly through the roadblock.

" A road should not ordinarily be completely barricaded by unoccupied vehicles or objects, although it may be considered in a situation where occupants of the pursued vehicle have caused a death and may do so again.

" Stationary roadblocks should be located in an area which provides a reasonably safe stopping distance to avoid hazards to officers and the public.

" Officers should place themselves in a position of safety. The officers should be in a position that also affords themselves the opportunity to make an apprehension if the violator does terminate the pursuit at the roadblock.

(2) Rolling roadblocks

" This is a partial blockage of the roadway by moving Patrol cars into position for the purpose of slowing or stopping the fleeing suspect. This usually involves the use of at least two or three Patrol cars, one in front, one to the side, and one to the rear. The Patrol cars then gradually slow to a stop, forcing the violator to stop.

" This type of roadblock is dangerous. The violator's behavior is unpredictable and many times will choose an avenue of escape, or ram the Patrol car.

" This type of roadblock should be utilized on open highways and in very light traffic.

d. Use of road spike devices

\* Road spike devices are spikes placed across the roadway to be used when officers are attempting to end a pursuit. They are an effective tool designed to stop a vehicle by deflating the tires. They are designed to be laid across the roadway so that when a vehicle passes over them, the hollow spikes penetrate and pull free from the rubber belt. The tires are then deflated at a controlled rate, resulting in a safe and effective immobilization of the vehicle.

\* These devices should only be used in conjunction with a stationary roadblock to slow the violator prior to striking the road spike devices. Notice of the intent to use the spikes will be announced on the LEA frequency to officers involved in the pursuit prior to laying them across the roadway. DO NOT use the spikes for stopping a



motorcycle.

\* The spike strips should not be used in locations where specific geographic configurations increase the risk of injury to any person, i.e., alongside rivers or embankments.

\* The spike strip should not be deployed on two-way roadways unless oncoming traffic has been stopped at a reasonable distance from the actual deployment site.

\* When the fleeing vehicle approaches, the officer will pull the spike strip onto the roadway surface and then step away from the spike strip in case the device moves when the violator's vehicle passes over it. The officer should make every effort to avoid having an innocent motorist drive over the spike. If this is not possible, the device still should be activated. If damaged, the innocent motorist's vehicle will be repaired at state expense.

\* Examples of site diagrams depicting how to set up the spike strip are included as an appendix to this policy.

#### J. Legal Intervention

1. Legal intervention is the intentional contact between the P. P. O. and the violator's vehicle. Legal intervention may be used to terminate a pursuit, if in the P. P. O.'s judgment all other previously described techniques either have not been, or would not be successful. Legal intervention should only be considered at low speeds of 30 to 35 MPH. See the appendix to this policy for a diagram of one type of successful method for legal intervention.

#### K. Procedures to Follow After a Pursuit is Concluded

1. If the officer that initiated the pursuit is not present when the pursued violator is apprehended, the officer will go to the scene of the apprehension, unless otherwise directed by a supervisor.

2. All other officers who participated in the pursuit, but were not directly involved in the apprehension, will immediately return to normal duties following the pursuit, unless otherwise directed by a supervisor. These officers will file written reports, as required by divisional regulations.

3. If a death, serious injury, or serious property damage occurs in a pursuit, or if the pursued vehicle was rammed or struck by an officer's vehicle, the following procedures will be observed:

a. The supervisory officer originally notified of the pursuit will be notified and will, as soon as possible through the chain of command, notify the Commissioner, or designee.

b. The officer who initiated the pursuit and all officers directly involved in it will file written reports with their immediate supervisors within two days following the incident. Copies of the reports will be sent to:

1. The Commissioner
2. Internal Affairs Bureau
3. The Division Director
4. Plans, Training and Research Bureau

c. For a pursuit not resulting in death, personal injury, or property damage, the officers involved in the pursuit will file an incident report with the officer's supervisor within five days. Copies of the report will be sent through the chain of command to the Plans, Training and Research Bureau.

4. The Plans, Training and Research Bureau will maintain a database of incident reports on pursuits and will periodically report statistical information on pursuits to the Division Directors and Commissioner.

# APPENDIX F

## INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE SAMPLE POLICY - 1996

NOTE: This is a copy of the official IACP Sample Policy on Vehicular Pursuit, voted on and approved at the 1996 Annual Conference. This will replace the National Law Enforcement Policy Center policy on the same subject. The Policy Center will not be publishing a new policy on Vehicular Pursuit, but will instead defer to the official IACP policy on that subject.

Pursuit

*Submitted by: Highway Safety Committee*

*AHS018.a96*

WHEREAS, police pursuits have become an increased focus of attention for public safety officials, the news media and the public at large; and

WHEREAS, an acceptable balance must be obtained between the capture of fleeing suspects and the responsibility of law enforcement to protect the general public from unnecessary risks; and

WHEREAS, there is no uniform reporting criteria or system in place to accurately account for all pursuits; and

WHEREAS, many agencies have excellent comprehensive policies in place while others have minimal or no policies at all dealing with pursuits; and

WHEREAS, some states have enacted serious penalties for consciously attempting to elude the police while others have not; and

WHEREAS, there is a need to adopt a generic "sample" policy that can serve as a minimum guideline for all agencies involved with pursuits; now, therefore, be it

RESOLVED, that the International Association of Chiefs of Police (IACP), duly assembled at its 103rd annual conference in Phoenix, Arizona, encourages all agencies to adopt written policies governing pursuits, and that these policies contain at a minimum all the elements put forth in the IACP "sample" policy and that all members of the agency receive familiarization training in the policy; and be it

FURTHER RESOLVED, that the IACP and the National Highway Traffic Safety Administration (NHTSA) develop a uniform pursuit reporting criteria and form to accurately document pursuit involvements and results nationwide; and be it

FURTHER RESOLVED, that the IACP and NHTSA encourage the state legislatures to make it a criminal offense with severe punishments to evade arrest by intentionally failing to comply with the lawful order of a police officer to stop a motor vehicle; and be it

FURTHER RESOLVED, that the IACP, NHTSA and the National Association of Motor Vehicle Manufacturers work together to apply technology that will disable fleeing vehicles and minimize the need for pursuits; and be it

FURTHER RESOLVED, that the IACP adopt the attached pursuit policy as its sample and that it be made a part of the Manual of Model Police Traffic Services Policies and Procedures maintained by the Highway Safety Committee, and that this policy replace and rescind all prior IACP policies on this subject.

**INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC.**

**SAMPLE VEHICULAR PURSUIT POLICY**

**Effective Date:** October 30, 1996

**Subject:** Vehicular Pursuit **CALEA Standard Ref:** 41.2.2, 61.3.4

**Reevaluation Date:** October 30, 1999

**I. PURPOSE:**

The purpose of this policy is to establish guidelines for making decisions with regard to vehicular pursuit.

**II. POLICY:**

Vehicular pursuit of fleeing suspects can present a danger to the lives of the public, officers, and suspects involved in the pursuit. It is the responsibility of the agency to assist officers in the safe performance of their duties. To fulfill these obligations, it shall be the policy of this law enforcement agency to regulate the manner in which vehicular pursuits are undertaken and performed.

**III. DEFINITIONS:**

- A. Vehicular Pursuit: An active attempt by an officer in an authorized emergency vehicle to apprehend a fleeing suspect who is actively attempting to elude the police.
- B. Authorized emergency vehicle: A vehicle of this agency equipped with operable emergency equipment as designated by state law.
- C. Primary unit: The police unit which initiates a pursuit or any unit which assumes control of the pursuit.
- D. Secondary unit: Any police vehicle which becomes involved as a backup to the primary unit and follows the primary unit at a safe distance.

**IV. PROCEDURES:**

- A. Initiation of pursuit:

1. The decision to initiate pursuit must be based on the pursuing officer's conclusion that the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.
2. Any law enforcement officer in an authorized emergency vehicle may initiate a vehicular pursuit when the suspect exhibits the intention to avoid apprehension by refusing to stop when properly directed to do so. Pursuit may also be justified if the officer reasonably believes that the suspect, if allowed to flee, would present a danger to human life or cause serious injury.
3. In deciding whether to initiate pursuit, the officer shall take into consideration:
  - a. road, weather and environmental conditions;
  - b. population density and vehicular and pedestrian traffic;
  - c. The relative performance capabilities of the pursuit vehicle and the vehicle being pursued;
  - d. The seriousness of the offense; and
  - f. The presence of other persons in the police vehicle.

B. Pursuit Operations:

1. All emergency vehicle operations shall be conducted in strict conformity with applicable traffic laws and regulations.
2. Upon engaging in a pursuit, the pursuing vehicle shall activate appropriate warning equipment.
3. Upon engaging in pursuit, the officer shall notify communications of the location, direction and speed of the pursuit, the description of the pursued vehicle and the initial purpose of the stop. The officer shall keep communications updated on the pursuit. Communications personnel shall notify any available supervisor of the pursuit, clear the radio channel of non-emergency traffic, and relay necessary information to other officers and jurisdictions.

4. When engaged in pursuit, officers shall not drive with reckless disregard for the safety of other road users.
5. Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles, a primary and a secondary unit. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor.
6. The primary pursuit unit shall become secondary when the fleeing vehicle comes under air surveillance or when another unit has been assigned primary responsibility.

C. Supervisory Responsibilities:

1. When made aware of a vehicular pursuit, the appropriate supervisor shall monitor incoming information, coordinate and direct activities as needed to ensure that proper procedures are used, and shall have the discretion to terminate the pursuit.
2. Where possible, a supervisory officer shall respond to the location where a vehicle has been stopped following a pursuit.

D. Pursuit Tactics:

1. Officers shall not normally follow the pursuit on parallel streets unless authorized by a supervisor or when it is possible to conduct such an operation without unreasonable hazard to other vehicular or pedestrian traffic.
2. When feasible, available patrol units having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by other than a marked patrol unit, such unit shall disengage when a marked unit becomes available.
3. Motorcycles may be used for pursuit in exigent circumstances and when weather and related conditions allow. They shall disengage when support from marked patrol units becomes available.
4. All intervention tactics short of deadly force such as spike strips, low speed tactical intervention techniques, and low speed channeling (with appropriate advance warning) should be used when it is possible to do so in safety and when the officers utilizing them have received appropriate training in their use.

5. Decisions to discharge firearms at or from a moving vehicle, or to use roadblocks, shall be governed by this agency's use of force policy, and are prohibited if they present an unreasonable risk to others. They should first be authorized, whenever possible, by a supervisor.
6. Once the pursued vehicle is stopped, officers shall utilize appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.

E. Termination of the Pursuit:

1. The primary pursuing unit shall continually re-evaluate and assess the pursuit situation including all of the initiating factors and terminate the pursuit whenever he or she reasonably believes the risks associated with continued pursuit are greater than the public safety benefit of making an immediate apprehension.
2. The pursuit may be terminated by the primary pursuit unit at any time.
3. A supervisor may order the termination of a pursuit at any time.
4. A pursuit may be terminated if the suspect's identity has been determined, immediate apprehension is not necessary to protect the public or officers, and apprehension at a later time is feasible.

F. Interjurisdictional Pursuits:

1. The pursuing officer shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction or across the county or state line.
2. Pursuit into a bordering state shall conform with the law of both states and any applicable inter-jurisdictional agreements.
3. When a pursuit enters this jurisdiction, the action of officers shall be governed by the policy of the officers' own agency, specific inter-local agreements and state law as applicable.

G. After-Action Reporting.

1. Whenever an officer engages in a pursuit, the officer shall file a written report on the appropriate form detailing the circumstances. This report

shall be critiqued by the appropriate supervisor or supervisors to determine if policy has been complied with and to detect and correct any training deficiencies.

2. The department shall periodically analyze police pursuit activity and identify any additions, deletions or modifications warranted in departmental pursuit procedures.

H. Training:

Officers who drive police vehicles shall be given initial and periodic update training in the agency's pursuit policy and in safe driving tactics.

***NOTE:** This sample policy is intended to serve as a guide for the police executive who is interested in formulating a written procedure to govern vehicular pursuit. IACP recognizes that staffing, equipment, legal, and geographical considerations and contemporary community standards vary greatly among jurisdictions, and that no single policy will be appropriate for every jurisdiction. We have, however, attempted to outline the most critical factors that should be present in every pursuit policy, including the need for training, guidelines for initiating and terminating pursuits, the regulation of pursuit tactics, supervisory review or intervention, and reporting and critique of all pursuits.*

Approved at the 103rd. IACP Annual Conference,  
Phoenix, Arizona, October 30, 1996



# APPENDIX G

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE MODEL POLICY - 1989

## **NATIONAL LAW ENFORCEMENT**

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**A Compilation of  
Model Policies**

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**POLICY CENTER**

## FOREWORD

**In 1987, the International Association of Chiefs of Police entered into a cooperative agreement with the U.S. Justice Department's Bureau of Justice Assistance to establish a National Law Enforcement Policy Center. The objective of the center was to assist law enforcement agencies across the country in the critical yet difficult task of developing and refining law enforcement policy.**

**Organized under the direction of a broad-based advisory board of recognized law enforcement professionals, the center has carried out this mission through the development of a wide variety of model law enforcement policies. Each model contained herein incorporates the research findings, the input of leading subject experts and the professional judgement of advisory board members who have wed this information with their extensive practical field and management experience. The end product is hopefully the best contemporary thinking in the field.**

**This having been said, it is also recognized that no "model" can meet all the needs of any given law enforcement agency. Each agency operates in a unique environment of specific state laws and local ordinances; political and community perspectives and customs, prerogatives and demands; dramatically different resource capabilities and within the context of often divergent law enforcement strategies and philosophies. These and related factors must be taken into account when attempting to apply the model policies to individual law enforcement agencies. The policies addressed in this document were selected because they represent some of the most difficult issues facing law enforcement administrators. The policy center continues to develop models in other priority areas and welcomes your input regarding subject areas that you feel should be explored.**

**In addition, to take full advantage of policy center technical assistance services and to receive model polices as they are published, we encourage you to join the center as a subscribing member. You may do so by completing and returning the enclosed application form and forwarding it to the IACP, National Law Enforcement Policy Center, P.O. Box 90976, Washington, D.C. 20090-0976. Telephone: 1-800-843-4227, or 1-703-836-6767, (in Virginia).**

# Model Policy

<i>Effective Date</i> December 1, 1989		<i>Number</i>	
<i>Subject</i> Vehicular Pursuit			
<i>Reference</i>		<i>Special Instructions</i>	
<i>Distribution</i>		<i>Reevaluation Date</i> November 30, 1990	<i>No. Pages</i>

**I. PURPOSE**

The purpose of this policy is to state the guidelines to be followed during vehicular pursuit.

**II. POLICY**

Vehicular pursuit of fleeing suspects presents a danger to the lives of the public, officers and suspects involved in the pursuit. It is the policy of this department to protect all persons' lives to the extent possible when enforcing the law. In addition, it is the responsibility of the department to assist officers in the safe performance of their duties. To effect these obligations, it shall be the policy of the department to narrowly regulate the manner in which vehicular pursuit is undertaken and performed.

**III. DEFINITION**

A. Vehicular Pursuit: An active attempt by an officer in an authorized emergency vehicle to apprehend fleeing suspects who are attempting to avoid apprehension through evasive tactics.

**IV. PROCEDURES**

**A. Initiation of Pursuit**

1. The decision to initiate pursuit must be based on the pursuing officer's conclusion that the immediate danger to the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.
2. Any law enforcement officer in an authorized emergency vehicle may initiate a vehicular pursuit when ALL of the following criteria are met:
  - a. The suspect exhibits the intention to avoid arrest by using a vehicle to flee apprehension for an alleged felony or misdemeanor that would normally require a full custody arrest;
  - b. The suspect operating the vehicle refuses to stop at the direction of the officer; and
  - c. The suspect, if allowed to flee, would present a danger to human life or cause serious injury.
3. The pursuing officer shall consider the following factors in determining whether to initiate pursuit:
  - a. The performance capabilities of the pursuit vehicle;
  - b. The condition of the road surface upon which the pursuit is being conducted;
  - c. The amount of vehicular and pedestrian traffic in the area; and

**B. Pursuit Officer Responsibilities**

1. The pursuing officer shall immediately notify communications center personnel that a pursuit is underway. The officer shall provide communications personnel with the following information:
    - a. Unit identification;
    - b. Location, speed and direction of travel of the fleeing vehicle;
    - c. Description and license plate number, if known, of the fleeing vehicle;
    - d. Number of occupants in the fleeing vehicle, and descriptions, where possible; and
    - e. Reasons supporting the decision to pursue.
  2. Failure to provide this information to communications personnel may result in an immediate decision by a field supervisor assigned to monitor the pursuit to order its termination.
  3. The primary pursuit unit shall reduce the level of pursuit to that of support or backup unit where:
    - a. The fleeing vehicle comes under the surveillance of an air unit; or
    - b. Another vehicle has been assigned primary pursuit responsibility.
  4. Any primary or backup unit sustaining damage to, or failure of essential vehicular equipment during pursuit shall not be permitted to continue in the pursuit. The unit shall notify communications so that another unit may be assigned to the pursuit.
- C. Communications Center Responsibilities**
1. Upon notification that a pursuit is in progress, communications personnel shall immediately advise a field supervisor of essential information regarding the pursuit.
  2. Communications personnel shall carry out the following activities and responsibilities during the pursuit:
    - a. Receive and record all incoming information on the pursuit and the pursued vehicle;
    - b. Control all radio communications and clear the radio channels of all nonemergency calls;
    - c. Obtain criminal record and vehicle checks of the suspects;
    - d. Coordinate and dispatch backup assistance and air support units under the direction of the field supervisor; and
    - e. Notify neighboring jurisdictions, where practical, when pursuit may extend into their locality.

**D. Field Supervisor's Responsibilities During Vehicular Pursuit**

1. Upon notification that a vehicular pursuit incident is in progress, the field supervisor shall assume responsibility for the monitoring and control of the pursuit as it progresses.
2. The field supervisor shall continuously review the incoming data to determine whether the pursuit should be continued or terminated.
3. In controlling the pursuit incident, the field supervisor shall be responsible for coordination of the pursuit as follows:
  - a. Directing pursuit vehicles or air support units into or out of the pursuit;
  - b. Redesignation of primary, support or other backup vehicle responsibilities;
  - c. Approval or disapproval, and coordination of pursuit tactics; and
  - d. Approval or disapproval to leave jurisdiction to continue pursuit.
4. The field supervisor may approve and assign additional backup vehicles or air support units to assist the primary and backup pursuit vehicles based on an analysis of:
  - a. The nature of the offense for which pursuit was initiated;
  - b. The number of suspects and any known propensity for violence;
  - c. The number of officers in the pursuit vehicles;
  - d. Any damage or injuries to the assigned primary and backup vehicle or officers;
  - e. The number of officers necessary to make an arrest at the conclusion of the pursuit; and
  - f. Any other clear and articulable facts that would warrant the increased hazards caused by numerous pursuit vehicles.

**E. Traffic Regulations During Pursuit**

1. Each unit authorized to engage in vehicular pursuit shall be required to activate headlights and all emergency vehicle equipment prior to beginning pursuit.
2. Officers engaged in pursuit shall at all times drive in a manner exercising reasonable care for the safety of themselves and all other persons and property within the pursuit area.
3. Officers are permitted to suspend conformance with normal traffic regulations during pursuit as long as reasonable care is used when driving in a manner not otherwise permitted, and the maneuver is reasonably necessary to gain control of the suspect.

**F. Pursuit Tactics**

1. Unless expressly authorized by a field supervisor, pursuit shall be limited to the assigned primary and backup vehicles. Officers are not

otherwise permitted to join the pursuit team, or follow the pursuit on parallel streets.

2. Officers may not intentionally use their vehicle to bump or ram the suspect's vehicle in order to force the vehicle to a stop off the road or in a ditch.
  3. Departmental policy pertaining to use of deadly force shall be adhered to during the pursuit.
- G. Termination of Pursuit**
1. A decision to terminate pursuit may be the most rational means of preserving the lives and property of both the public, and the officers and suspects engaged in pursuit. Pursuit may be terminated by the pursuing officer, the field supervisor or chief executive officer of the department.
  2. Pursuit shall be immediately terminated in any of the following circumstances:
    - a. Weather or traffic conditions substantially increase the danger of pursuit beyond the worth of apprehending the suspect;
    - b. The distance between the pursuit and fleeing vehicles is so great that further pursuit is futile; or
    - c. The danger posed by continued pursuit to the public, the officers or the suspect is greater than the value of apprehending the suspect(s).
  3. The pursuing officer shall relay this information to communications personnel, along with any further information acquired which may assist in an arrest at a later date.
- H. Interjurisdictional Pursuits**
1. The pursuing officer shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction, or across the state line.
  2. Pursuit into a bordering state shall conform with the department's interjurisdictional pursuit agreement and state law.
- I. The field supervisor shall prepare a comprehensive analysis of the pursuit, and forward it to the chief executive officer of the agency.**

BY ORDER OF

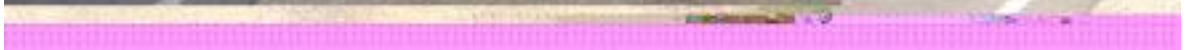
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CHIEF OF POLICE

This model policy is intended to serve as a guide for the police executive who is interested in formulating a written procedure to govern vehicular pursuit. The police executive is advised to refer to all federal, state and municipal statutes ordinances, regulations, and judicial and administrative decisions to ensure that the policy he or she seeks to implement meets the unique needs of the jurisdiction.

# APPENDIX H

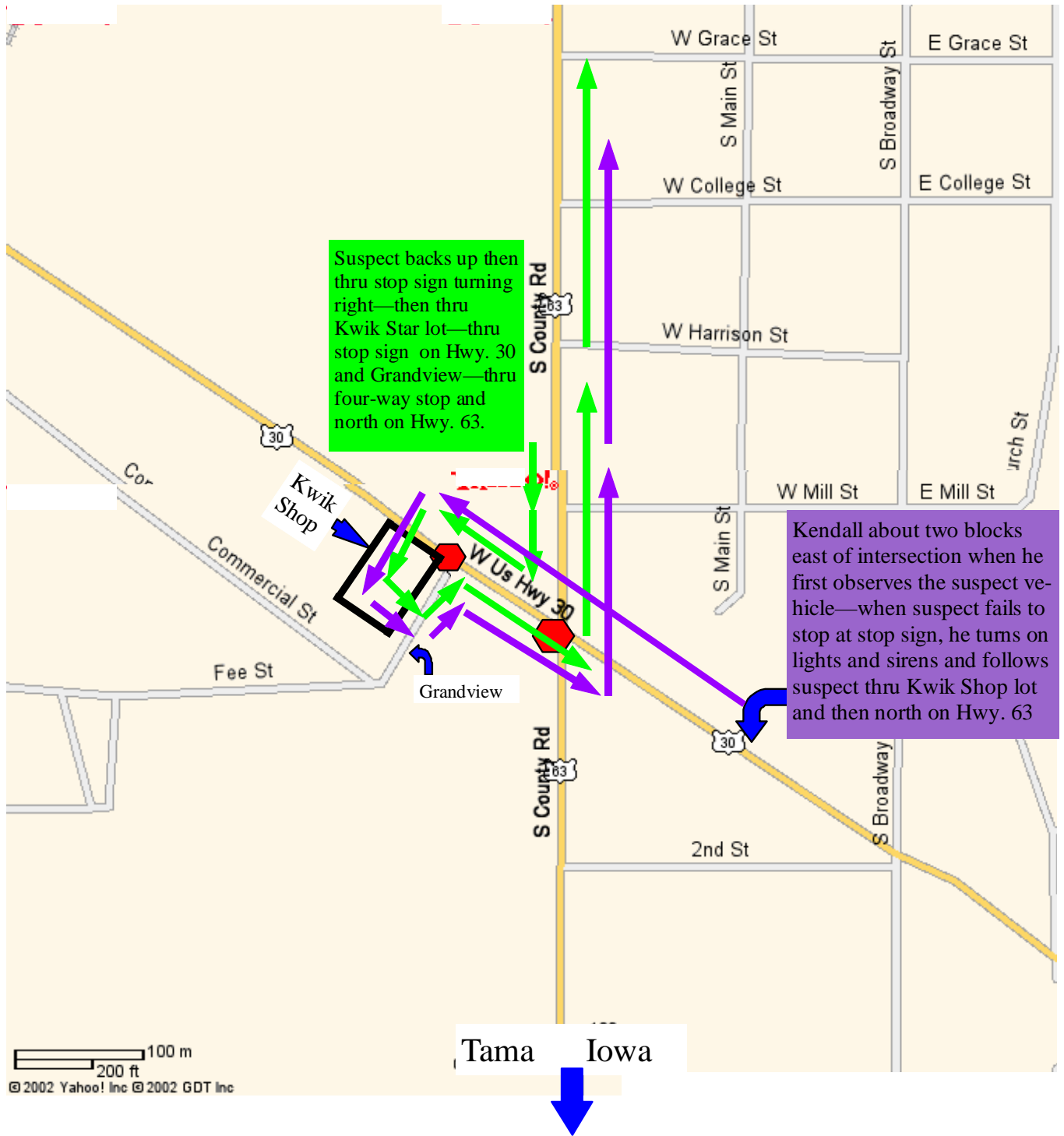
## Pictures of Scene Just Before Intersection





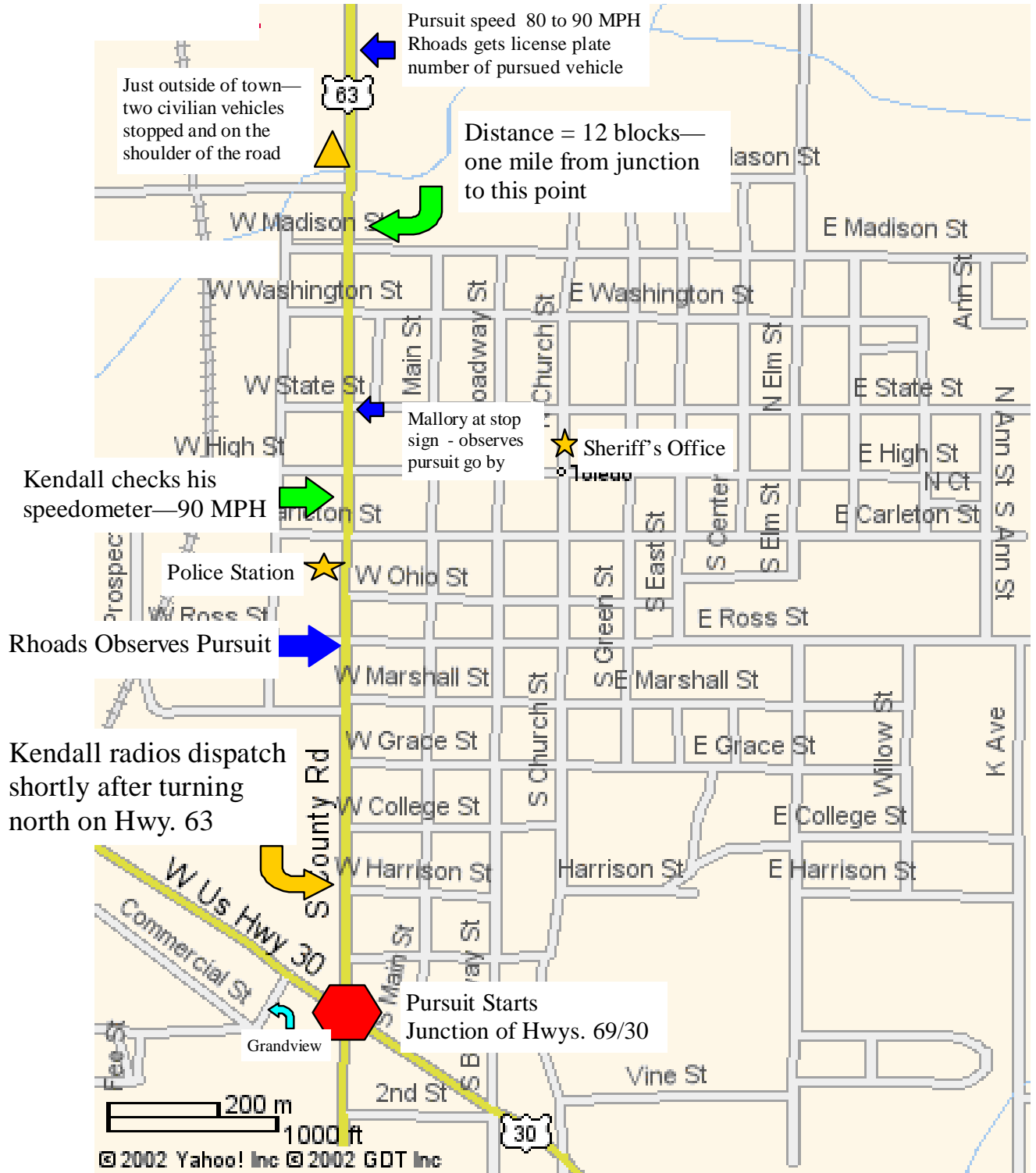
# APPENDIX I

Maps -- 1



# APPENDIX I

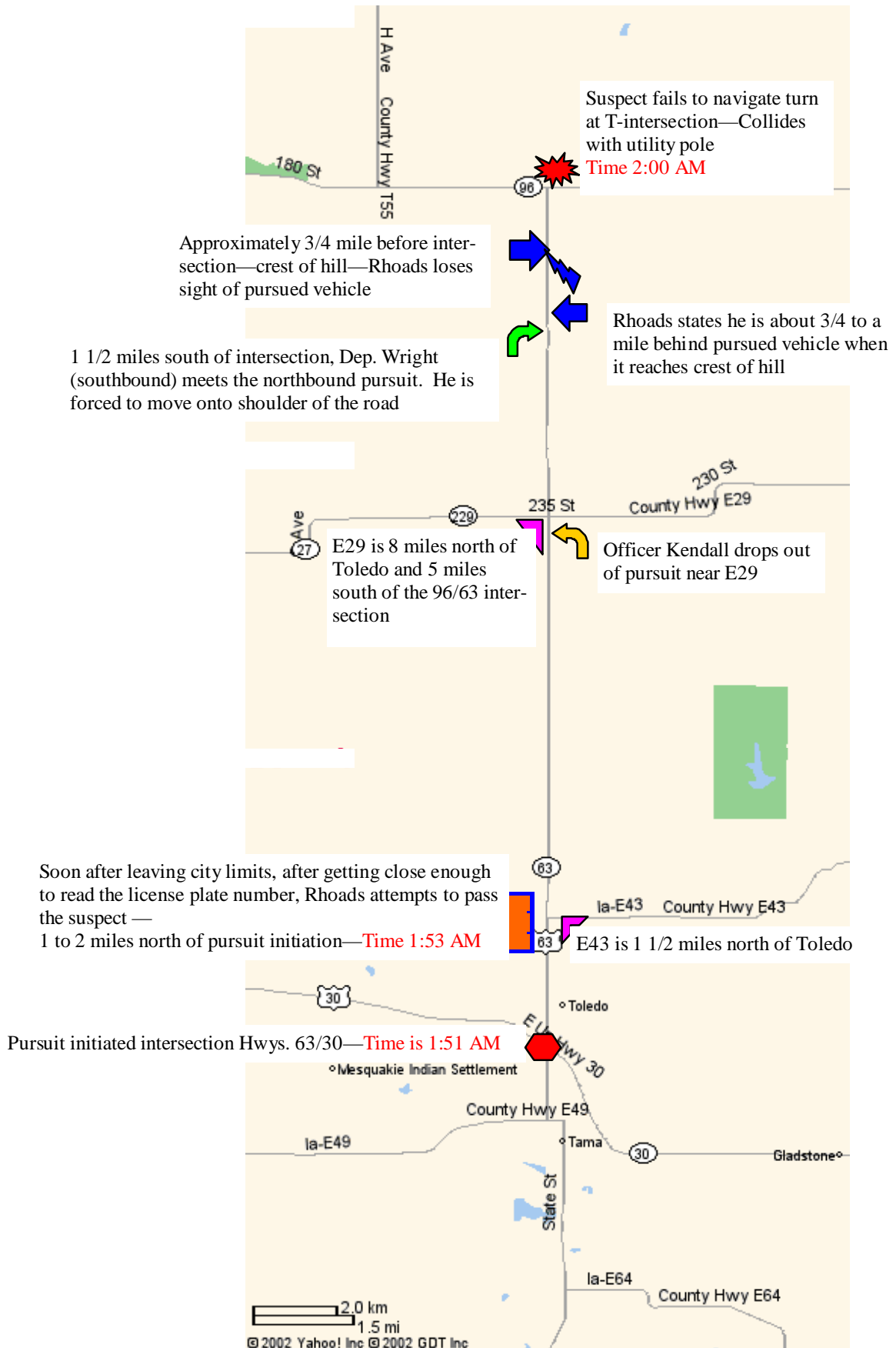
## MAPS -- 2





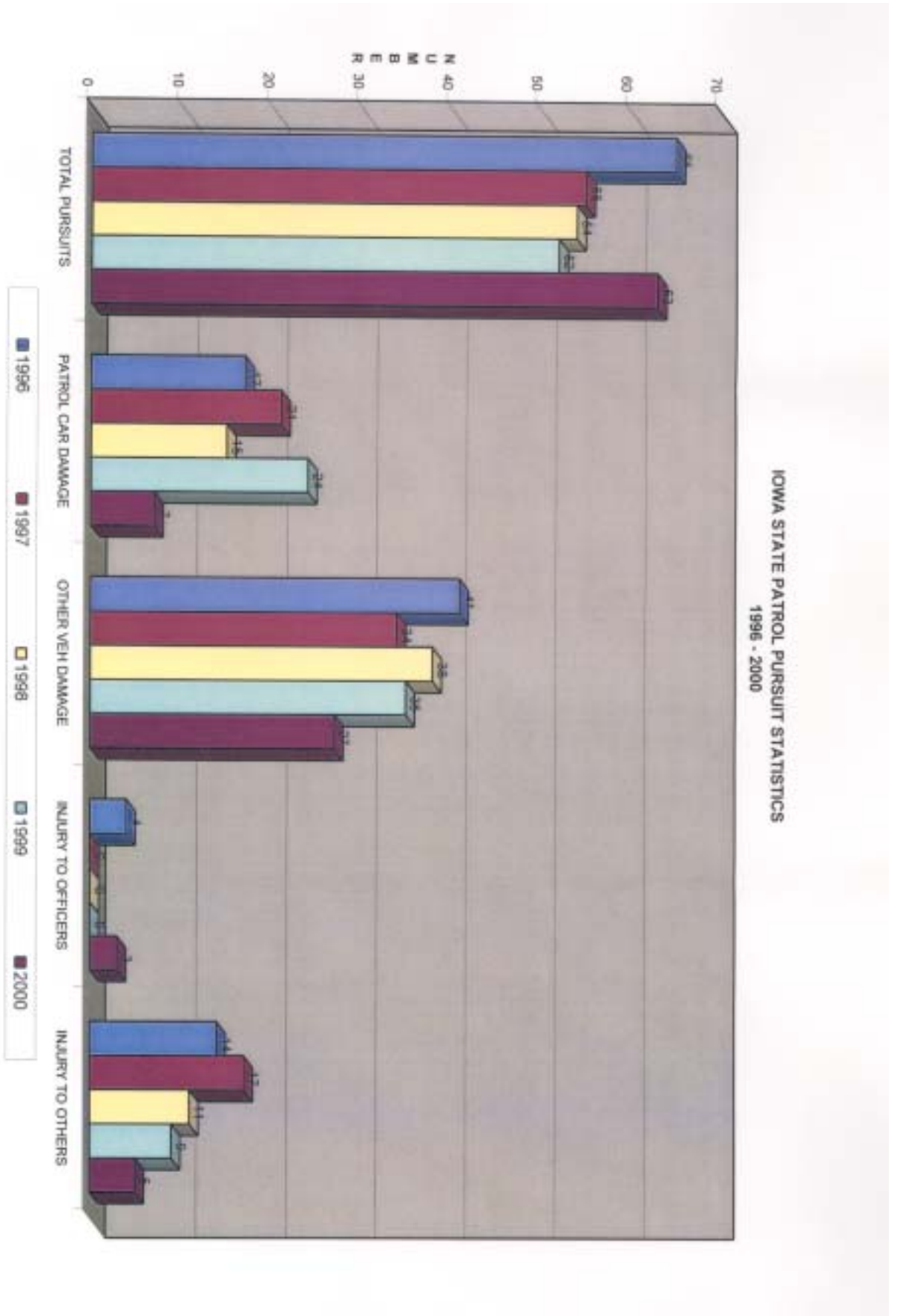
# APPENDIX I

## MAPS - 3



# APPENDIX J

## DPS PURSUIT STATISTICS GRAPH 1996 - 2000



# **APPENDIX K**

## ISP TECHNICAL REPORT

This seven page accident report of the Iowa State Patrol is confidential by law (Iowa Code Section 321.271) and is therefore not contained in the public version of the Ombudsman's Report.

# APPENDIX L

## *General Orders – 911 Emergency Management Communications Center*

### **General Orders**

These general orders are for specific call types that need to be addressed. This list of instructions is by no means complete and will need to be modified on a regular basis. Use your best judgement and experience to guide you to do any further than the instructions below.

As always get as much information as possible, basically the Who, What, Where, and When and any other details you can receive from the caller. These instructions will help with these particular call types.

#### ***Accidents – 10-50's***

When receiving an accident call reporting an accident immediately page the correct ambulance and fire department. Between the pages get a hold an officer and also advise Cedar Rapids State by Point to Point in case there is a Trooper closer to the 10-50, particularly when you are dealing with a 10-50 P. I. Advise the officer of the status of Trooper so he can make a decision if Trooper should or should not respond. If you have a situation where a officer has to be called out check with Cedar Rapids State first and advise them of the situation and see if they will call out a trooper in the immediate vicinity to cover the 10-50. If they can't get a Trooper to the scene within a reasonable time then call out the most accessible officer. When dispatching an officer to the call advise him precisely the information you have.

Do not give out the names of any persons involved in the accident, if you can possibly avoid doing so. If the reporting party wishes to remain confidential and the officer requests name via radio, advise him caller wished to remain anonymous. Only in emergency situations would the officer demand the name by radio after receiving that knowledge.

#### ***Pursuits- 10-80,***

Immediately start the call for service and update it as needed as officers and agencies become involved. Be sure to log pertinent information as officers or agencies relay them to you on the radio. Make notifications in tab #12 of this manual. If possible or when asked have units involved change to the same radio frequency. As necessary contact surrounding Counties and Iowa High Patrol communication centers.

#### ***Traffic Stops –***

Do your best to get the exact location of the officer what the license plate is on the vehicle. Do Not automatically tell them the information on the vehicle and wait for further instructions from the officer. If you have not heard from the officer in 3 minutes conduct radio check. If you do not get a response send the closest officer.

#### ***Domestic Violence Reports –***

Get the basic information as always. But also attempt to find out if weapons were used or on the premises. Then find out the direction of travel or vehicle the assailant if he or she has left the premises. Once you have officer in route direct next closest officer of situation and respond.

### ***Report fights –***

Get the basic information as always. But also attempt to find out if weapons are being used and most importantly find out the number of people involved in the fight. If there is more than one or two send the three closest officers. If there are two people involved only send one officer and notify a second to respond.

### ***Reported Fires-***

When asking questions of reported fires. Try to find out where in the building the fire is located (ie.. Basement, kitchen etc.) If possible try to find out what type of fire, meaning, is it regular house fire or gas, or maybe electrical. Ask if everyone one got out or missing. This information is helpful to the responding fire crews.

### ***Ambulance calls-***

As of April Emergency management commission meeting we will be re-certified on medical dispatching procedures. Until this is implemented as always get as much information as possible on the condition of the patient for the responding crews. It may help for those that have received the training to begin using the EMD cards until re-certified.

### ***Hazardous Materials Spills***

1. Page out correct Fire Department for the incident site.
2. Contact correct Law Enforcement Agency needed to respond.
3. Notify the Tama County Emergency Manager. (Scott)
4. Assist Fire Departments as requested.

Revised 05-30-01

# Emergency Notifications

## ***1. Notification of the Sheriff, and Police Chiefs***

Communication Operators should notify the Sheriff or chiefs as soon as practical of the following situations, or requesting officer has asked for assistance more than once:

- Accident involving one of their vehicles
- Pursuit involving one of their vehicles
- Accident involving fatalities
- Death Investigations
- Major crimes”
  - Armed robberies
  - Bank robberies
  - Others when in doubt if it's a major crime.
- Hostage situations
- Assault on one of their personnel

## ***2. Notification of Emergency Management Coordinator***

Communication Operators should notify the Communication Supervisor as soon as practical of the following situations:

- Any type of Communication Failure
- Accident/Incident Involving more than two Emergency Response Agencies
- Accident Involving more than Two Vehicles and/or a Tractor Trailer
- Hazardous Materials Incidents of any kind

### ***Special Notes:***

On duty officers may request that you notify other personnel, every attempt should be made to notify these people.

If there is a time either the Sheriff, Police Chief or Coordinator isn't available then their designated representative should be notified on the above circumstances. Like the Chief Deputy, Sgt, or Assistant.

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July 26, 2002

Mr. William P. Angrick  
Citizens' Aid Ombudsman  
1112 East Grand Avenue  
Des Moines, IA 50319

RE: Case file 01-1758  
Proposed Report of June 28, 2002

Dear Mr. Angrick:

This letter is mere introduction into the response that I have provided you under cover of July 19, 2002.

From one of our recent past discussions, you sought to have me provide you not only the written text of my response but also floppy disks of the same materials. Since my response incorporates at least one other floppy disk and a CD-ROM, I thought I would write this letter as introduction to that response.

With this letter, you will find a floppy disk from my office of the response I have made to you marked, "July 19 response".

Additionally, attached to that response is a transcript of all of the channels of radio communication and telephone traffic for the morning of April 6, 2001. This is the transcript that I directed the 911 center to create so as to permit you to better understand what was going on and when. A copy of that transcript has been submitted to me by Mr. Bruns, Director of Tama County Emergency Management. That floppy disk is marked "copy of 10-80-4-6-0.xls".

You should know that the Tama County E-911 Center has a CD recorder which simultaneously records the tracks of any radio frequency in use and also of different telephone calls, in-coming and out-going, from the Center. The same equipment also "time-stamps" electronically the exact time of any given transmission or call. Because this "time-stamp" feature cannot be duplicated on the CD-ROM I provide you, I have asked Mr. Bruns to transcribe the radio traffic and, from each frequency or track on his equipment, to identify each frequency by a separate color-coded type font; to identify each speaker; and to provide the precise times of each transmission or call. Because the recorder is able to keep communications of each frequency or line separate, a transcript of each will display clearly what is being said and when, that a composite of all traffic in real time will not. I have done all of this so that you are now able, as you apparently were not before, to confirm that E-911 Dispatch, the Sheriff and all Deputies involved complied with the Tama Pursuit Policy in the ways your Proposed Report questions.

## DISCUSSION

### I.

"Whether Tama County Deputy Rhoads',  
Deputy Wright's, and Reserve Deputy  
Mallory's Actions Complied with Mandatory  
Tama County Sheriff's Office Policies/Procedures."

The discussion of this topic begins at Page 30 of the Proposed Report and the introduction to Subsections A through E, pages 30 through 42, concerning compliance by the Deputies with various aspects of the Tama County policies, is preceded by the following two sentences:

"The Ombudsman identified in the Tama policy five mandatory provisions pertinent to this pursuit. The provisions and the Ombudsman's findings on each are as follows: ...[subsections A-E]." (Emphasis added).

Exception is taken with the first of the above-quoted sentences. The policies identified in Subsections A-E are not mandatory in the context of the Policy as drafted.

The Pursuit Policy has the following Sections: "Introduction", "Policy", "Rule", and "Procedure." The discussion in Subsections A through E of the Proposed Report are all addressed to provisions within the Pursuit Policy found in the "Procedure" portion, pages 3 through 10. The only rules created of a mandatory nature, because they are identified as "rules", are those provisions stated in the portion of the Pursuit Policy



denominated "Rule." See page 2.

Further, the "Procedure" portion of the Pursuit Policy is, just that, the recommended procedure ideally to be followed in an activity which, by definition from a law enforcement point of view, is so quickly evolving, so completely unpredictable, so wrought with uncertainty, and so involved with the need for exercise of trained, reflective individual discretion that it cannot be formulated into a series of rote commands denominated "mandatory." The fact that the "Procedure" portion of the Pursuit Policy uses the verbs "shall" or "will" does not convert the precatory words of a "Procedure" into a mandatory prescriptive when the very nature of the activity defined, as elsewhere emphasized under the "Procedure" rubric, describes a multitude of factors by which an individual officer's decision making is to be guided. As the Proposed Report itself acknowledges, at page 24,

"The policies for each department also contain sections with words such as "must" or "shall," which also involve the exercise of judgment or discretion. For example, the Tama policy states, 'A deputy **shall**, however, terminate involvement in a pursuit **whenever the risks to the safety of all concerned outweighs the danger to the community** if the suspect is not apprehended.' [Emphasis added]. While this policy item contains a mandate, it requires the officer to first make a judgment. The pursuit policies for each of these law enforcement agencies contain specific rules and factors an officer is to consider when deciding whether to initiate, continue, or terminate a pursuit. The analysis of the policies containing judgmental elements will be addressed following discussion of the mandatory rules." (Emphasis and brackets in original).

It is submitted, then, that what is acknowledged to be an activity which is inherently discretionary should not, then, be denominated with the "...following discussion of the mandatory rules." (Emphasis added). The last sentence of the above-quoted paragraph is internally contradictory and a *non sequitur*. Respectfully, the discussion commencing at page 30 should have the heading amended to delete the word "mandatory" so that the caption reads:

"Whether Tama County Deputy Rhoads',  
Deputy Wright's, and Reserve Deputy  
Mallory's actions complied with Tama

County Sheriff's Office Policies/Procedures."

II.

While I do not recall whether Mr. Calloway asked or not, you should know that both Deputies Rhoads and Wright received commendations from the Tama County Sheriff for their involvement in this matter. I attach both of such letters to this response.

Your report accurately reflects that the stolen Lexus automobile involved in the pursuit attempted to push Deputy Rhoads off Highway 63 as he attempted to pass that vehicle. That attempt to pass, by Deputy Rhoads, was made at a speed of between 80 and 90 miles per hour so that Rhoads could implement an intended "rolling road block." The Lexus swerved into Rhoads' vehicle at these speeds as he came along side of the Lexus for this pass.

Your Report further documents that Deputy Wright became involved when he traveled southbound on Highway 63 in hopes that his involvement as another law enforcement vehicle to the north of the pursuit coming towards him would impel the Lexus to stop and pull over. However, you also correctly note that the Lexus swerved in Deputy Wright's southbound lane in an attempt to ram him and he avoided this head-on collision only by pulling fully over onto the southbound shoulder. In connection with your discussion of Deputy Wright's involvement, you do not note that the speed of the Lexus, when it attempted to ram Deputy Wright's cruiser, was well above 120 miles per hour and, according to Deputy Rhoads, was going between 140 to 150 miles per hour.

I make these observations because it is apparent that whoever was driving the Lexus committed an assault of the most serious magnitude against both Deputies Rhoads and Wright exposing each of them to serious personal injury or death. But this did not deter either officer from fulfilling their duties of law enforcement. Indeed, when the Lexus crashed and the vehicle was fully engulfed in flame, both Deputies Rhoads and Wright once again exposed themselves to serious personal injury or death in attempting to save the culprits in the burning automobile while that fire raged and before the gas tank exploded. Unfortunately, only one individual in the car, of four who were occupants, was extracted alive before the heat became so intense that the vehicle could not even be approached.

Your Report, therefore, overlooks also commending both officers for this successful life saving endeavor of one who had used deadly force against these same officers.

The words "hero" and "heroic" have become commonplace in recent public discussion and overused in describing the most benign and ordinary of acts. But if you choose not to describe the life-saving efforts of Deputies Rhoads and Wright in these terms, it is respectfully suggested you publicly acknowledge these officers' efforts were successful, selfless and above and beyond the call of duty.

### III.

The Report proposes criticism of Deputy Rhoads for becoming involved in the pursuit, commenced by Toledo Police Officer Kendall, because Kendall did not expressly request the assistance of the Sheriff's Office as he began pursuit of the Lexus northbound on Highway 63. While the Report has also concluded that Deputy Rhoads' actions in becoming involved were reasonable, since it was implicitly understood by all officers that assistance was to be given --- "backup" --- even though not expressly requested by another officer, the Report proposes that Deputy Rhoads violated the Sheriff's written policy that deputy sheriffs not join in pursuit "...without receiving a specific request for assistance." Report, page 31, Subsection A. The Report further proposes criticism of Deputy Rhoads under that provision of the Pursuit Policy which states:

"A deputy who becomes aware of another agency's pursuit shall not become involved unless specifically authorized by both the on-duty shift supervisor and personnel from the other law enforcement agency."

Report, page 31, Subsection B.

It would be most ironic, and probably considered nonsensical to the Tama County public, that in a police activity such as a high speed pursuit an officer would be castigated for assisting another officer as in violation of a written policy. In any other matter, mundane or serious, no one would question an officer's extension of help to another in uniform. It is commonplace to observe more than one policeman pulled along the road behind another when the first is ticketing a motorist for even some traffic infraction. And it would be heresy for an officer not to voluntarily involve himself, without requested assistance, when the corner store is robbed, the murderer is on his way or those bent on all variety of mayhem are in our midst, in giving aid to others hired to protect us. Police are trained not to sit on their hands. So, when a high speed pursuit develops, there is implicitly something serious enough gone on to make the culprit run when aware the police want a stop for some reason. And whether the offense is minor or major cannot be known until the stop is made unless along the way something becomes known to allow an officer's belief that the risk inherent in a pursuit is greater

than the underlying infraction. That is why there is a world of difference between chasing a car of high-schoolers for throwing an empty beer bottle out the window compared to chasing a car known to be stolen with an unknown number of occupants who may well, therefore, be engaged in a serious continuing criminal enterprise of which the police are completely unaware. If any Tama County Deputy Sheriff had waited for both another law enforcement agency's express request for assistance coupled with expressly conferred authority from that agency's on-duty shift supervisor, precious time lost would allow possibility of perfected escape by those who do not want to be captured. And if the reason for the high speed evasion was the presence of a kidnap victim in the car, the loot of a heist on the back seat or kilos of drugs stashed in the car's compartments, surely the local citizenry would be irate, if not the waiting officer's superiors ready with a sanction for an officer idled by awaited permission when the kidnaped victim could have been saved --- (for a case in point, consider Allen v. Anderson, 490 N.W.2d 848 (Iowa App. 1992)) --- or the booty or drugs taken, along with the suspects' capture.

As this very episode proves, the supervising officer was out of radio contact serving a warrant. Deputy Wright, next in the chain of command, knew about the evolving pursuit but did not know he was the *de facto* supervising officer for purposes of the pursuit itself. Had Deputy Rhoads awaited the delay and confusion of unscrambling who was in charge before receiving official authority to engage, the time lost might well have dictated no response at all by him. In determining that Deputy Rhoads self-initiated pursuit of the Lexus was reasonable, the Proposed Report recognizes that no response by Deputy Rhoads would have been unreasonable; particularly when Kendall was still chasing and Wright had been informed and was heading that way. As Deputy Wright testified, quoted in the Proposed Report, at 36:

"It's a, uh, common practice that when you got an officer in a pursuit or in a situation where he is going to need help, it's just automatic to assist him in any way you can. It's not, you know, basically sit around and wait for someone to call you for help."

It is respectfully submitted that the public is better served when officers trained and certified by the Iowa Law Enforcement Academy exercise informed discretion by voluntarily pursuing a vehicle bent on escape than when that vehicle is allowed free pass by officers too inhibited by a regulation that might be later read as curtailing the exercise of legitimate authority. More pointedly, do we wish to place our trust in those sworn to uphold the law and to protect us or that those who are allowed to abscond and

further threaten any of us may do so by a regulation too rigidly construed?

As to Deputy Mallory, the Proposed Report observes that he "...was not assigned to the pursuit. He joined on his own volition after hearing Officer Kendall's radio call and observing the pursuit vehicle pass in front of him." Report, at 34. The Report concludes that by becoming involved in the pursuit without being directly assigned by the on-duty shift supervisor, under the Pursuit Policy, Mallory also violated that policy, along with Rhoads, by becoming involved. While elsewhere the Proposed Report concludes that Mallory's joinder in the pursuit was reasonable, the Report has overlooked or misunderstood Deputy Mallory's role.

Mallory was not involved in the pursuit of the stolen Lexus and its occupants aimed at apprehension, as was Deputy Rhoads. True, Mallory became involved and followed both Kendall and Rhoads northbound on Highway 63 out of Toledo before passing Kendall, who finally dropped out. But as Mallory testified of the high speeds he achieved in following Rhoads' pursuit of the Lexus, he asked himself again and again "Why am I still involved? Why am I still doing this?"

Mallory answered this question to himself by reflecting about what he knew of the unfolding events, even as they were swirling around him: (1) He knew that Deputy Rhoads was first in line in pursuing the Lexus; (2) he knew that Officer Kendall had dropped out of the pursuit; (3) he knew nothing about Deputy Wright or his whereabouts; and (4) he therefore believed he was the only other law enforcement officer besides Rhoads involved at all. Mallory thus answered his own rhetorical questions believing that, while he was not actively involved in the pursuit itself, he was following the direction of that pursuit to assist Deputy Rhoads, to serve as backup, regarding whatever was to be the outcome of that pursuit since Mallory thought Rhoads was the only officer involved after Kendall dropped out. There may be a fine distinction between being involved in the pursuit itself and being involved to assist other officers involved in that pursuit that is not readily apparent. Concededly this distinction is difficult to draw when an assisting officer --- here Mallory --- heads the direction of the pursued vehicle, behind the other officer pursuing that vehicle, with speeds equal to those of the primary pursuit vehicle. Given these facts, the distinction seemingly rests upon the officer's subjective intent when the objective facts cannot confirm whether the officer was a pursuer or assisting those who were pursuers. But Deputy Mallory went along to assist Deputy Rhoads for the reasons stated believing himself not to be involved in the pursuit; rather, to assist Rhoads whatever the outcome. Because Mallory would testify to this were these questions asked, it is submitted the Proposed Report be amended to acknowledge this fundamental and critical distinction.

IV.

The Proposed Report has overlooked, or misunderstood or not clearly known about the reasons Deputy Rhoads fell so far behind pursuit of the stolen Lexus auto.

The Report summarizes Deputy Rhoads' involvement in the pursuit accurately stating that Rhoads had pulled close enough to the Lexus to obtain its license number and, after being advised by dispatch that the vehicle came back as reportedly stolen, that Rhoads had attempted to pass the Lexus. Rhoads pulled along side the Lexus at between 80 to 90 miles per hour hoping to get in front of it to perform a "rolling road block." However, at this point, the Lexus swerved over attempting to crash with Rhoads or at least force him off the road. Rhoads then fell back in behind the Lexus and followed that vehicle. Twice on the tape or CD-ROM, Rhoads can be heard excitedly reporting that he is going 120 miles per hour and, a short time later, "122" [miles per hour] and "they're pulling away from me." Shortly after Kendall advises he is running out of gas, Rhoads radios dispatch, "they're pulling away from [him at 120] leaving [him] behind."

Deputy Rhoads knew that the car he was driving that night was capable of going 140 miles per hour. While Rhoads had driven many times on Highway 63 before at 120 miles per hour, he did not feel personally comfortable going faster than 120 miles per hour, even though knowing his car could well exceed that speed. Rhoads later found out that the manufacturer of the Lexus automobile had electronically programmed that car to go between 140 and 150 miles per hour. And, as the Lexus pulled away from Rhoads as he maintained about 120 miles per hour that morning, the pace of its advance indicated to Rhoads that the Lexus was going between 140 and 150 miles per hour. Because Rhoads would go no faster than 120 in his own vehicle and the Lexus was far out pacing him at its estimated speeds, Rhoads literally thought, during the pursuit itself, that he was out of the chase. In accordance with the Pursuit Policy, he continued the northbound direction of the fleeing Lexus in an attempt to keep track of the vehicle's whereabouts so as to assist other law enforcement, which dispatch was then attempting to contact, in Traer and at two Iowa Highway Patrol posts, for possible apprehension.

Significantly, the Proposed Report described Deputy Wright's involvement, as related to Rhoads' northbound pursuit, in certain particulars inaccurately.

When Kendall advised dispatch that the 10-80 was beginning at 1:51 A.M., Deputy Wright was the first law enforcement contacted by dispatch. Wright, who lives in Gladbrook, was in his cruiser sitting on the west edge of Gladbrook when dispatch

contacted him. When Wright informed dispatch he was headed toward the junction of Highways 63 and 96, he had about 7 miles to travel. When Wright arrived at the junction of those highways, he saw and heard nothing. Wright's car radio was on the local operations frequency and his distance away from Toledo did not permit him to hear either Kendall or Rhoads on the same frequency responding to dispatch as the pursuit began. Wright's only knowledge of what was transpiring came through the voice of dispatch directly to him on the operations frequency. Thus, Wright could not hear Rhoads' broadcasts that he was involved or that everyone should go to the LEA frequency. Wright, therefore, stayed on the local operations frequency.

When Wright arrived at the junction of Highways 63 and 96, he remained there about 30 seconds before heading south on 63, the direction from which the Lexus was coming. He advised dispatch on his operations frequency that he was now southbound on 63 and dispatch immediately re-broadcast that to Rhoads over the LEA frequency. Wright was going approximately 50 to 55 miles per hour southbound. About 1 to 1 ½ miles south of that junction, Wright began to hear snippets of broken radio traffic of the chase communications on the LEA frequency through the scanner in his car, though he was still on the operations frequency. He was also able to begin seeing the flashing lights of patrol vehicles, coming toward him, as those vehicles topped hills. As the Lexus veered into Wright's southbound lane, forcing him onto the shoulder to avoid collision, Wright turned around northbound and waited on the shoulder of the road then hearing Rhoads (on the scanner) say "let me go by you, let me go by you or I'll hit you." By this time, Rhoads had slowed down to 80 miles per hour. Wright understood this last instruction from Rhoads to be that he, Wright, was not to accelerate in following until Rhoads had passed him.

With Rhoads' speeds reduced from 120 miles per hour to the approximate 80 miles per hour when he passed Wright, the fleeing Lexus was well out of sight by the time Rhoads reached the junction of Highways 63 and 96. Upon arrival at that junction, Rhoads can clearly be heard telling dispatch: "I don't see which way they turned, I'm going to assume they went ah - - they wrecked out!, they wrecked out off the T!"

Both Deputies Rhoads and Wright would testify to the accuracy of these observations, just made, were they asked.

It is respectfully submitted the Proposed Report be amended to accurately reflect these facts and the Report's conclusions altered accordingly. Specifically:

1. "Deputy Rhoads had fallen a considerable distance behind the suspect

vehicle”, Proposed Report, at 10.

Rhoads had, in fact, decided not to pursue the Lexus at its estimated speeds of 140 to 150 miles per hour, though he knew his vehicle was capable of 140 miles per hour, feeling uncomfortable at speeds in excess of 120. This decision, a decision to essentially terminate the pursuit, comports with various of the Pursuit Policy statements that “(t)he primary unit may maintain pursuit as long as it is safe to do so...”, page 4, but that “(t)he termination of a pursuit does not prohibit following the pursued vehicle at a safe speed or remaining in the area to reinstate pursuit if the opportunity and conditions permit.” Page 5. It also acknowledges that Deputy Rhoads had this primary responsibility: “The decision to begin, responsibility to continue, and method of pursuit rests primarily with the individual deputy involved.” Page 3.

2. “While Deputy Wright was called by dispatch and informed a Toledo policy officer was in a pursuit heading his way, he was not assigned to that pursuit and did not request permission to join in.” Proposed Report, at 34.

The sentence, above quoted, reflects a conclusion which must be substituted. True, Wright was called by dispatch and informed of a 10-80 in progress headed northbound on Highway 63. True, Wright advised dispatch he would head that direction --- the intersection of Highways 63 and 96 where Wright logically believed the pursued vehicle would pass through. But Wright’s acknowledgment to dispatch of her call and his stated intention to head that way did not transform his involvement as one joining in the pursuit of another jurisdiction for which Wright is criticized.

While Deputy Mallory’s involvement may be open to question, as dependent upon the distinction between him being a pursuer or merely going along to assist those who were pursuers, Deputy Wright’s involvement is not even open to that question. Wright was pursuing no one --- Officer Kendall and Deputy Rhoads were. Wright was miles away from the location at which Officer Kendall started the pursuit. Merely because dispatch advised Wright that a pursued vehicle might eventually end up nearer his location does not make Deputy Wright a pursuer. His response to dispatch of “heading that direction” might --- as it did --- later implicate Wright directly in the affair, but Wright’s initial involvement was obviously aimed in providing assistance, should that be needed, in locating and then apprehending those running from other police. Indeed, Wright was not directly involved in the pursuit until after the Lexus had run him off the road and he U-turned to follow Deputy Rhoads.

It is respectfully submitted that not all officers who play some role in locating and apprehending felony suspects involved in a high speed pursuit are themselves directly



involved as pursuit vehicles. The Pursuit Policy itself contemplates this distinction, at 2, when observing "Only those vehicles which are directly involved in an active vehicle pursuit (chase vehicles), the supervisor, and other law enforcement vehicles specifically authorized by the supervisor, shall engage in a vehicle pursuit." (Emphasis added). As this quoted rule suggests, a vehicle in pursuit is a chase vehicle following the pursued. Further confirmation that not all units involved are pursuit or chase vehicles is substantiated by two other provisions in the Pursuit Policy. Under "Roadblock Implementation in Conjunction with Vehicle Pursuit", page 6, it is recognized that other officers may attempt implementation of a roadblock because they are ahead of, and not pursuing, the location of a chased vehicle. Their assistance implicates them in the episode but clearly they are not chasing or pursuing vehicles. Similarly, the policy "Assisting Unit's Responsibilities", at pp. 7-8, contemplates that "(t)he active pursuit will normally involve not more than three units: the primary unit and one or two backup units", but that "(a)ll other units will remain aware of the direction and progress of the pursuit but shall not actively participate."

It is submitted the vice of a high speed pursuit which the Pursuit Policy aims at defeating is that too many pursuing police cars all chasing a pursued vehicle create added roadway dangers, confusion over lines of authority and responsibility and chaos or near impossibility in coordination. This objective, taken out of the context it embraces, thus can be read too broadly to prevent other officers from standing by or from converging toward dangerous suspects if those others are criticized as being "pursuers" when they are not in fact.

3. "Since Deputy Rhoads was involved in the pursuit when Deputy Wright engaged, this provision appears to apply to him." Proposed Report, at 34.

This quoted sentence is plainly wrong. The tape or CD-ROM demonstrates conclusively that dispatch contacted Deputy Wright immediately after being informed by Officer Kendall of the beginning 10-80. Wright's response to dispatch that he would "head that way" came before Deputy Rhoads advised dispatch, three seconds later, that he was involved: "County, 10, I'm also in."

## V.

The Proposed Report examines the issue of the "Authority to Terminate Pursuit", at pages 40 to 42, focusing on Sheriff Kucera's involvement and his authority to terminate a pursuit. The Proposed Report draws no conclusions about whether Sheriff Kucera "failed to reasonably exercise his authority to terminate the pursuit." This response now permits the conclusion the Sheriff acted reasonably under circumstances.

It should be observed in the Final Report that the entire time elapsed in this pursuit --- from the moment Officer Kendall called in the 10-80 to the moment when Deputy Rhoads discovered the stolen Lexus crashed and on fire --- was 7 minutes and 9 seconds.

The telephone call to Sheriff Kucera by dispatch concerning this 10-80 is recorded so that its precise time and contents can be determined. The call to Kucera is made beginning 4 minutes and 2 seconds after Officer Kendall notifies dispatch that the pursuit has begun and lasts 53 seconds. In it, dispatch inquires of Kucera the whereabouts of stop sticks since the pursuit is apparently headed towards Traer. In that call, on Line 4 of the CD-ROM, one can clearly hear Deputy Rhoads in the background say, as the call starts, "I'm at a 122 and they're pulling away from me." That statement is made 4 minutes and 1 second into the pursuit. By the time dispatch's phone call with Kucera ends 53 seconds later, the pursuit has gone on 4 minutes and 53 seconds. There remain another 2 minutes and 24 seconds until the pursuit has ended with Rhoads' transmission that "They wrecked out!, They wrecked out off the T!", at 1:58:42.

The Proposed Report has not attempted to convey to the reader the compressed dimensions of this entire episode. Perhaps the Report could not hope to capture the intensity of these dramatic 7 minutes in its multi-page recitals or to convey the urgency of coordinated human effort in the unpredictability of this law enforcement venture. But, respectfully, it is proposed that the Final Report should acknowledge that the events examined here in circumspect detail and in the detached luxury of quiet contemplation are light-years removed from the literal split-second decisions those involved are empowered to make. And it should acknowledge, as Deputy Rhoads has reported above, that he decided to terminate the pursuit because he was unwilling to go more than 120 miles per hour at the precise second --- literally --- dispatch phoned Sheriff Kucera. The Proposed Report accurately recites, as the Pursuit Policy states, that deputies inferior to the Sheriff can terminate a pursuit, particularly the primary pursuing unit. It must acknowledge now that Rhoads had decided to terminate as the Sheriff was being called. Further, it must admit that Sheriff Kucera responded, as chief law enforcement officer of the County, to being called out due to the pursuit, but it had ended by the time the Sheriff had gone on duty at 2:03:03.

## VI.

One of the "recommendations" made in the Proposed Report, number 7 at page 76, is that "After a Pursuit, the Officer(s) Involved Debrief with appropriate supervisory personnel."

Your Final Report should note that the Pursuit Policies already refer to a supervisory review of the involved officers' actions whenever any high speed pursuit eventuates. Under the heading "Supervisory Responsibilities", at 6-7 such later review is referenced:

"If it is later determined by the Sheriff that a pursuit clearly should have been terminated yet was allowed to continue, the initiating deputy, on-duty shift supervisor, and senior supervisor involved may face disciplinary action."

Further, under the heading "Reports to be Submitted", it is stated:

"The report will include a detailed account of the chronology of the pursuit, decisions made, reasons for those decisions, and the disposition of the pursuit. All reports will be submitted by the end of the employee's tour of duty, unless extenuating circumstances exist."

Since the Proposed Report recognizes that Sheriff Kucera, when called by dispatch about the existence of the pursuit, responded by getting out of bed and leaving his home to become involved directly, but the Lexus had wrecked by the time Kucera reached his patrol vehicle, (Proposed Report 40-41), it is obvious that Kucera was not involved directly in the pursuit itself. The Proposed Report also acknowledges that it has "Sheriff Kucera's written statement...". (Proposed Report 40, n. 14). That written statement importantly confirms compliance with the Pursuit Policy in two important respects. First, the Sheriff reports:

"The bodies of the deceased were removed and marked from the position in the car. The bodies were transported to the State Medical Examiners Office. The deputies involved in the pursuit I sent to the Sheriff Office to begin their paperwork, and statements relating to the pursuit. I left the scene when the wrecked vehicle was loaded and taken to the Impound lot. I then myself went to the Sheriff Office to work on the case. I read the officers statements that were prepared. I then reviewed our policy and procedure manual on Pursuit driving, believing,

or realizing there would be opinions formed about the incident.”

(Emphasis added).

As the Sheriff's Reports demonstrates, each deputy and the Sheriff complied with the Pursuit Policy in its quoted provisions. The deputies' reports were made out immediately and the Sheriff reviewed those reports immediately. Second, and more importantly, the Sheriff concluded compliance by the deputies with the pursuit policies: "I believe we were within our policy during the pursuit of the stolen vehicle by the Deputies."

The Final Report should reflect this dedicated obedience to those Policies by all involved.

## VII.

As one of its "Recommendations", the Final Report proposes that "The Toledo Police Chief and the Tama County Sheriff Review and Amend Current Pursuit Policies", at 75. Specific proposals to be included in any recast or amended Pursuit Policy are recommended.

This letter is signed by legal counsel for Sheriff and his Deputies. As the Ombudsman is aware from prior discussion with that legal counsel, the issue of amending or changing, in any way, the Pursuit Policies in place on April 4, 2001 is fraught with legal peril when the threat of litigation over that incident has been made, as here. The undersigned counsel has advised the Sheriff not to change those policies because opposing counsel, in a civil trial, can attempt to convince the jury that the policy change was made to correct a provision under which officers acted or which the officers violated which caused the harm alleged in the case. Confirmation that the provision is offending and causative in the resulting harm arises from the fact that the Sheriff changed it, so Plaintiff's theory goes. I am certainly aware that under the law of evidence, the post-accident repair doctrine can be raised to prevent admission of certain evidence and might operate to preclude the admission of any policy changes you suggest and which I have counseled against. Yet, I am cognizant that doctrine, under Iowa Rule of Evidence 5.407, comes with its own exceptions and application of the doctrine is typically left in the sound discretion of the judge to which these problems are submitted.

I hope you will take no offense to the Sheriff's response, at my strong insistence, that the Pursuit Policy will not be reviewed for the changes you recommend as litigation

Mr. William P. Angrick, II  
July 19, 2002

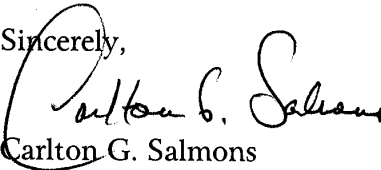
Page 15

appears imminent. You may rest assured, however, that when any litigation is finally concluded or the applicable statutes of limitation have run their course, I will advise the Sheriff at that time to undertake the review your recommendations suggest.

CONCLUSION

On behalf of the Tama County Sheriff and his Deputies, I wish to thank the Ombudsman for providing the time to make this extended response. Only by allowing this Response will the public served by you and the law enforcement officers whose conduct you have examined, come to know that they were well served under these most extreme circumstances.

Sincerely,



Carlton G. Salmons

CGS/ps



# Tama County Sheriff's Office

Dennis P. Kucera, Sheriff

Deputy:  
Ruopp

July 24, 2001

Division:  
John Fowler

To: Tama County Deputy Sheriff Mike Wright  
Tama County Sheriff's Office  
Toledo, IA

Administration:  
Wathan

Communications/911:  
Bruns

From: Sheriff Dennis Kucera  
Chief Deputy Dave Ruopp

Is:  
Burnes

Tama County Supervisors  
Larry Vest  
Jim Ledvina  
Keith Sash

Doyle

Dear Mike

es:  
Wilkins  
Karr  
Hansen  
ebetka  
Wright  
Killian  
Rhoads  
Sonderleiter  
aldazo

On April 6<sup>th</sup> of 2001, you were thrust into a situation that no person or officer wishes to be. It is with great appreciation that we bestow this letter of appreciation and commendation upon you.

You showed great fortitude and effort in the attempt to save the lives of Martavis Simpson, Rashad Greer, Tyrone Seals and Cordell Hodges. It is your effort that saved the life of Mr. Hodges. Without your efforts, Mr. Hodges would most certainly not be alive today.

Please accept this letter of commendation.

Communicators:  
Jailers:  
Flowers  
Parks  
arly  
oy  
Lasley  
Vokoun  
Pansgrau  
Speicher  
utenhorst  
Miller  
Loney  
eekley

Sincerely

Sheriff Dennis Kucera

Chief Deputy Dave Ruopp

Supervisor Larry Vest

Supervisor Jim Ledvina

Supervisor Keith Sash



And  
911 Communications Center

Phone- 641-484-6261 Fax: 641-484-2198  
P.O. Box 61 Toledo, IA. 52342

JUL 24 2002

Director:  
Scott Bruns

22 July 2002

Assistant:  
Dorothy Flowers

Carlton,

Communicators:  
Diane Lasley  
Diane Vokoun  
Daryl Pansegrau  
Dana Meyer  
Dana Mallory  
Diane Youngbear  
Diane Johnson

Enclosed you will find the following item you request last week concerning the Ombudsman report.

1. Radio Transcript color coded by frequency or phone line.
2. Sheriff was called at 1:55:35.
3. Sheriff radio'd in at 2:03:03 going out in his car.
4. Copy CFS 01002399, shows Deputy Wilkens busy from 22:13 through 03:23 a.m.
5. Diskette, containing copy of radio transcript.

Any question, or you need anything else please call.

Sincerely,

Scott Bruns  
Tama County  
Communications Director

Frequency	Time	Officer	Traffic / Conversation
ps	1:51:30	Officer Kendall	"Tama County 43"
peater	1:51:32	Tama Center	"43"
ps	1:51:33	Officer Kendall	"10-80 I'm north-bound on 63"
peater	1:51:43	Tama Center	"10-4 one fifty-one. 86-8, Tama County, are you direct? I have a 10-80 north-bound outa 63, on 63, fif..forty three's in..in prog..progress."
peater	1:51:53	Deputy Wright	"10-4 heading that way"
peater	1:51:57	Deputy Rhoades	"county 10, I'm also in it"
peater	1:52:00	Tama Center	"10-4, can I get a car description 43"
ps	1:52:08	Officer Kendall	"unknown, uh, standby, I can I can't up to 'em"
peater	1:52:13	Tama Center	"10-4 152"
ps	1:52:25	Officer Carr	"Tama county 53"
peater	1:52:28	Tama Center	"53"
ps	1:52:34	Officer Carr	"I'll be proceeding in that direction, um, when your not 10-6 if you could advise 51"
peater	1:52:37	Tama Center	"10-4 152"
ps	1:52:41	Officer Kendall	"Tama County 43 do you want to advise 41"
peater	1:52:42	Tama Center	"10-4"
peater	1:52:52	Deputy Rhoades	"Tama county 10, Blackhawk county plates 592JBD, 592JBD he just tried to ram me"
peater	1:53:02	Tama Center	"10-4 153"
peater	1:53:10	Deputy Rhodes	"switch it over to LEA there might be a trooper ahead of us guys"
A	1:53:27	Deputy Rhoads	"Tama county 86-10 on lea, see if we got any troopers north of us their trying to ram our patrol cars"
to P	1:53:32	Tama Center	"Cedar Rapids State, Tama County point to point, Cedar Rapids State, Cedar Falls State I have 10-80 tam county north bound on hwy 63 from Toledo, blackhawk county plate 592JBD"
A	1:53:43	Rdeputy Mallory	"Tama county SR5, north bound 63 passing 285th, north bound passing 280th"
to P	1:53:56	CF State Center	"Tama County who are you calling"
A	1:54:03	Center	"All units on LEA, this is a possible stolen vehicle, possible stolen vehicle"
A	1:54:12	Deputy Rhoads	"Tama County 10, notify someone in traer, off duty cars let's get some stop sticks ahead of these guys"
A	1:54:33	Deputy Rhoads	"are you direct tama county wake someone up in traer"
A	1:54:38	Center	"10-4, I'm trying"
A	1:54:42	Rdeputy Mallory	"north bound 63 from 270th 85 mph"
A	1:54:50	Deputy Rhoads	"we're stepping it up, I'm at 110 right now pacing him, 110 115 mph"
A	1:54:56	Center	"10-4, Cedar rapids st.. state on LEA are you direct?"
to P	1:55:11	Tama Center	"Cedar Falls State, Tama county point to point , Cedar Falls State"
A	1:55:12	Deputy Rhoads	"120 mph tama county"
to P	1:55:17	CF State Center	"Tama County go ahead"
to P	1:55:21	Tama Center	"Cedar Falls state I have a 10-80 in progress north of Toledo on hwy 63, they are not yet to the 96 junction, license plate 592JBD, comes back as possible stolen vehicle their going 120"
A	1:55:34	Deputy Rhoads	"I'm at 122 their pulling away from me"
ie 4 Out	1:55:35	Sheriff	"hello"
ie 4 Out	1:55:36	Tama Center	"... Radio traffic.. At 122 their pulling away..."
ie 4 Out	1:55:38	Sheriff	"Hello"
ie 4 Out	1:55:40	Tama Center	"l.. I got a high, Dennis,"



ne 4 Out	1:55:41	Sheriff	"yep"
ne 4 Out	1:55:43	Tama Center	"I need um, stop sticks put out in traer possible, we have 10-80 north bound on 63 at 120 mph, and it's a stolen vehicle"
ps	1:55:51	Officer Kendall	"Tama County 43"
ne 4 Out	1:55:51	Sheriff	"we don't...Uh..."
peater	1:55:51	Tama Center	"...43"
ne 4 Out	1:55:52	Tama Center	"Pardon"
peater	1:55:54	Deputy Wright	"Tama County 86-8"
ne 4 Out	1:55:54	Sheriff	"I don't if we got any up here, but uh, if somebody to put'em out that would be great"
ne 4 Out	1:55:58	Tama Center	"who do you suggest? I don't know who has them"
peater	1:55:58	Tama Center	"I'm pbxing now"
ps	1:56:00	Officer Kendall	"did you advise 41 by any chanc...?"
ne 4 Out	1:56:02	Sheriff	"ya got IHP"
ne 4 Out	1:56:04	Tama Center	"not yet, I have cedar falls notified but"
ne 4 Out	1:56:05	Sheriff	"Craig.. He can go to Traer"
ne 4 Out	1:56:08	Tama Center	"he's to far away don't you think"
EA	1:56:09	Deputy Rhoads	"hitting the brakes boys, they might try to turn, naught too late going straight"
ne 4 Out	1:56:11	Sheriff	"well I don't know, I'll be out here shortly but uh, yeah, he'd be the closest one for traer"
ne 4 Out	1:56:18	Tama Center	"all right, bye"
ne 3 Out	1:56:24	Tama Center	"Dysart!"
ne 3 Out	1:56:25	Tama Center	"yeah"
ne 3 Out	1:56:26	Chief Martin	"hello"
ne 3 Out	1:56:28	Tama Center	"Hi, Wayne, um Bob Kendall is, got a 10-80 going north bound on 63, we also have uh, couple deputies going north and the guy tried to ram their cars, it's a possible stolen vehicle, Bruce says he's at 120 mph and their leaving him behind"
EA	1:56:29	Officer Kendall	"run radio traffice for 8"
EA	1:56:31	Deputy Rhoads	"what"
ne 3 Out	1:56:33	Chief Martin	"oh, my"
ne 3 Out	1:56:34	Tama Center	"male voice... god damn it Kendall, female voice..he's out of gas"
EA	1:56:34	Officer Kendall	"my car starting to run out of gas here"
ne 3 Out	1:56:35	Tama Center	"Bob Kendall is gonna 10-22 cause he's gonna run out of gas"
EA	1:56:38	Deputy Rhoads	"static... we got it"
EA	1:56:40	Officer Kendall	"you got'em stopped"
EA	1:56:43	Deputy Rhoads	"negative, their pulling away from me, I'm at 120 and their leaving me behind"
EA	1:56:48	Officer Kendall	"10-4 uh I'm getting way out of my territory here I'm going to 10-22 this"
EA	1:56:54	Deputy Rhoads	"Static.. Ok"
peater	1:56:57	Deputy Wright	"10 from 8"
ne 3 Out	1:56:57	Chief Martin	"yeah, that's fine, that's probable the best thing anyway... situation"
ne 3 Out	1:57:01	Tama Center	"yeah"
ne 3 Out	1:57:03	Tama Center	"so, I wonder if Bruce is closer than Bob to the vehicle or what"
ne 3 Out	1:57:05	Tama Center	"yeah"
peater	1:57:08	Tama Center	"86-8 tama county, do you have stop sticks?"
EA	1:57:10	Deputy Rhoads	"86-8, where you at"



peater	1:57:13	Deputy Wright	"negative tama county"
peater	1:57:16	Tama Center	"can I check your 20?"
peater	1:57:20	Deputy Wright	"south bound 63"
peater	1:57:23	Tama Center	"where at on 63"
peater	1:57:26	Deputy Wright	"190th, coming up to 200th"
EA	1:57:27	Deputy Rhoads	"86-10 86-8 on LEA where ya at"
EA	1:57:31	Center	"he's at 190th, he's still on repeater, I'll advise him to go to LEA, he does not have stop sticks Dennis thinks the closest one is Craig Karr in dysart"
EA	1:57:41	Deputy Rhoads	"Just get someone ahead of them so we can do a rolling road block we're coming up on the intersection of 9
to P	1:57:44	DSM State Center	"Tama County from Des Moines State on point to point Tama...."
ne 3 Out	1:57:47	Chief Martin	"where are they at now"
to P	1:57:47	Tama Center	"Cedar Falls state do you have traffic for tama county"
to P	1:57:53	DSM State Center	"Tama County from DesMoines State"
EA	1:57:53	Deputy Rhoads	"when I try to pass him tama county, they try to ram me"
peater	1:58:01	Deputy Wright	"tried to go me head on"
ne 3 Out	1:58:02	Tama Center	"he's trying to ram Bruce again"
EA	1:58:03	Deputy Rhoads	"let me blow by ya, let me blow by ya 8 or I'm gonna hit ya"
peater	1:58:08	Deputy Wright	"come on ahead"
to P	1:58:08	Tama Center	"Cedar.. Cedar Falls state I am unable to copy your traffic"
ne 3 Out	1:58:13	Tama Center	"oh, he tried to do Mike Wright head on"
to P	1:58:13	DSM State Center	"Static....."
ne 3 Out	1:58:15	Chief Martin	"their south of traer then right?"
ne 3 Out	1:58:16	Tama Center	"yeah"
ne 3 Out	1:58:20	Tama Center	"Ok, I guess they want me to call Craig, just sec, guess he's the one with the stop sticks, that don't do much good if he's the only one that's got'em"
EA	1:58:23	Deputy Rhoads	"run radio traffic for me will ya 8"
ne 3 Out	1:58:24	Chief Martin	"yeah that's right"
ne 3 Out	1:58:26	Tama Center	"sounds like Bob is.. is stopped, um"
to P	1:58:30	CF State Center	"Cedar Falls state to tama County"
ne 3 Out	1:58:30	Chief Martin	"going back to get gas then, uh"
to P	1:58:33	Tama Center	"Go ahead Cedar Falls state"
ne 3 Out	1:58:34	Tama Center	"Well, I don't suppose he'll go back"
to P	1:58:36	CF State Center	"Tama uh, Grundy and Blackhawk"
EA	1:58:42	Deputy Rhoads	"gotta see which way they turned, I'm gonna assume they went uh, they wrecked out, they wrecked out off the
ne 3 Out	1:58:47	Chief Martin	"No"
to P	1:58:51	CF State Center	"Tama Continuing, we don't have any troops out our closest out are over on I35, Grundy and blackhawk are both ok with your traffic, just keep'em posted on it"
ne 3 Out	1:58:52	Tama Center	"they werecked out on what?, the car wrecked so"
EA	1:58:53	Rdeputy Mallory	"county this is SR5, they 10-50d, 63/96 both myself and 86-10 are gonna be out with it"
ne 3 Out	1:59:02	Chief Martin	"OK"
EA	1:59:02	Deputy Rhoads	"It's fully involved, send us the fire department, this is gonna be an F"
ne 3 Out	1:59:03	Tama Center	"did you get his location"
EA	1:59:10	Center	"10-4"

EA	1:59:16	Rdeputy Mallory	"tama county this vehicle is fully en-gulfed"
EA	1:59:21	Deputy Wright	"Tama County 86-8"
repeater	1:59:24	Tama Center	"86-8"
EA	1:59:29	Center	"86-8 go ahead"
o Fire	1:59:40	Tama Center	"Attention Traer Ambulance Traer Fire, We have a 10-50 P unknown, car is fully en-gulfed, at the end of t junction 63/96 time is 2 o'clock"
to P	1:59:41	Blackhawk Center	"Tama County from Blackhawk when not 10-6"
to P	1:59:48	Tama Center	"Go ahead Blackhawk"
to P	1:59:51	Blackhawk Center	"reference your 10-80 on that vehicle it is confirmed stolen out of waterloo"
to P	1:59:57	Tama Center	"10-4 believe we have uh 10-50F of that vehicle"
to P	2:00:04	Blackhawk Center	"10-4 zero 200, just advise by teletype when you can"
repeater	2:00:08	Deputy Wright	"County this will be an F"
to P	2:00:10	Tama Center	"10-4 2 o'clock"
repeater	2:00:16	Deputy Wright	"one possible still alive"
EA	2:00:17	Center	"10-4 I have ambulance and fire paged"
repeater	2:00:38	Deputy Wright	"County 86-8"
repeater	2:00:47	Deputy Wright	"Tama County 86-8"
EA	2:00:51	Deputy Rhoads	"County 86-10"
repeater	2:00:56	Deputy Wright	"Tama County on repeater"
EA	2:00:58	Center	86-10
repeater	2:00:59	Tama Center	"go ahead"
EA	2:01:03	Deputy Rhoads	static.. Get ambulance we got one still alive, get a T1 headed this way
repeater	2:01:05	Deputy Wright	"got one that's possible still alive, could be one F in the vehicle still, it's fully involved in flames"
EA	2:01:08	Center	"10-4 201"
repeater	2:01:10	Tama Center	"10-4 I was direct on that traffic, I've got fire and ambulance paged"
EA	2:01:18	Deputy Rhoads	"direct"
o Fire	2:01:19	Tama Center	"Attention Traer Fire Traer Ambulance, 10-33 have a vehicle that went off the end of junction of 96/63 in high speed chase, car is fully engulfed, one fatality one injured time is 201"
EA	2:01:27	Deputy Rhoads	"Tama County, are you direct I need ambulance 10-33"
EA	2:01:31	Center	"I've got'em paged, they are paged"
EA	2:01:35	Deputy Rhoads	"Also got a power pole on fire"
repeater	2:02:03	Sheriff Kucera	"Tama County 86-1 10-8"
repeater	2:03:06	Tama Center	"10-4 86-1, there at the end of 96/63 junction, one fatal, one possibly still alive, Traer fire and ambulance have been paged, T1 is, their trying to get a T1"
repeater	2:03:21	Sheriff Kucera	"10-4"
repeater	2:03:31	Deputy Wright	"Tama county 86-8"
repeater	2:03:34	Tama Center	"86-8"
repeater	2:03:37	Deputy Wright	"possibly four people still in vehicle, but it's fully en-gulfed, this'd be F's, we got one that was pulled out he's still alive at this time"
repeater	2:02:45	Tama Center	"10-4 202, I'll get two ambulances"



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August 13, 2002

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Mr. William P. Angrick II  
Citizens' Aide/Ombudsman  
State of Iowa  
Ola Babcock Miller Building  
1112 East Grand Avenue  
Des Moines, IA 50319

Re: Investigative Report Number: 02-01  
Ombudsman File Number: 01-1758

Dear Mr. Angrick:

I am writing on behalf of the City of Toledo, the Toledo Police Department and Officer Kendall regarding the above investigation. Your letter of June 28, 2002 directed to Chief Wayne Martin of the Toledo Police Department indicates you intend to publish your report pursuant to Iowa Code Section 2C.17. Your June 28 letter also invites the City of Toledo to reply to your written report.

As I interpret your report, your conclusions pertaining to the Toledo Police Department and Officer Kendall are that they followed the policies and procedures that were in place as of the time of this pursuit. Rather than not respond to your invitation to reply to your report, I am writing to advise that should anyone interpret your report as being critical with the steps taken by Officer Kendall and the Toledo Police Department in this matter, we would like to be on record as saying we do not agree with any such interpretation. The facts of this matter substantially support a conclusion that the City of Toledo and Officer Kendall acted appropriately.

I am sure you will agree the City of Toledo has been cooperative throughout your study of this matter. Please be advised that if there is any additional information you are

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Mr. William P. Angrick II  
August 13, 2002  
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seeking in order to complete your study of this matter the City will continue to cooperate in this regard.

Very truly yours,

  
Gregory A. Witke

GAW/dh

cc: Stephen A. Kenkel

The Ombudsman disagrees with the Tama County response that policy mandates can sometimes, and in this case should, be read as discretionary practice options. It is the responsibility of public officials to properly set forth what are mandatory and what are discretionary procedures. Judgment and facts play a role in this setting, good policies delineate when choices and judgments are permitted. The argument presented in the Tama County response would in effect reduce the exercise of choice or judgment to a standard of if it was done, then it must have been right. The Ombudsman disagrees with Tama County's application of that meaning of policy and stands by the report. Procedures generally are part of agency policy and are different than best or acceptable practices.

The Ombudsman also rejects the Tama County contention that the public is better served when trained and certified officers exercise informal discretion in contravention of official written policy. If the policy is too rigid or in error then amend the policy. It is not preferable to ignore policy directives with fiat in the field. While officers need appropriate tactical field decision making discretion, there are certain general boundaries of their behavior that should be defined by managerial and policy limitations. An unfettered behavior and the instantaneous, emotional reaction of joining whatever pursuit presents itself in an instinctual expression of fraternal loyalty is less desirable than exercising informed judgment before participating in those risky situations. Even the examples given in the Tama County response of officers involving themselves in pursuits of store robbers, fleeing murderers, or those bent on public mayhem suggest greater knowledge for that participation than an uninformed chase behavior justified by a questionable rationale that all who flee are culprits and have done something implicitly serious. In this particular situation, Tama County deputies joined in the pursuit without knowing why Officer Kendall had initiated it, which was for a simple traffic violation.

Tama County requests that the report be amended to acknowledge that Reserve Deputy Mallory was not actually involved in the pursuit. The Ombudsman declines to do so. The 1989 Model Policy defines pursuit as “[a]n attempt by an officer in an authorized emergency vehicle to apprehend fleeing suspects who are attempting to avoid apprehension through evasive tactics.”

In testimony given to the Ombudsman by Reserve Deputy Mallory, but not quoted in the report, Mallory said: “It was not my intention to assist Officer Kendall at all... [I]t happened a little more quickly than my intention - I drove to the intersection where I knew the pursuit would come by and I saw Deputy Rhoads also initiating and joining in the pursuit. And that time I thought that I should also.” [Interview August 21, 2001]. Accordingly the Ombudsman believes there is little basis to argue otherwise. Reserve Deputy Mallory by his own admission was involved in the pursuit. The only issues are whether he joined it according to departmental policy and whether his actions during the pursuit were appropriate or reasonable. The Ombudsman criticized Mallory's decision to join the pursuit. The Ombudsman did not find fault with his actions during the pursuit after the decision to join had been made.

Tama County contends Deputy Wright was “pursuing no one” ... “until after the Lexus had run him off the road and he U-turned to follow Deputy Rhoads.” The Ombudsman disagrees.

The Model Policy also speaks to attempts to apprehend in addition to chase behavior. Pursuits often can include strategic interception tactics.

Officer Wright told the Ombudsman he drove to the chase, deliberately turned his vehicle around after he had been challenged by the fleeing vehicle, and joined in the line of law enforcement vehicles following the suspect. While not a lead pursuer, he was an engaged participant. There is no evidence that he was ever assigned to assist by a supervisor, which is Tama County policy.

The Ombudsman disagrees with the Tama County response that Deputy Rhoads made an “explicit and conscious” decision to terminate the pursuit when it reached speeds approaching 140 miles per hour (mph). The evidence relied upon by the Ombudsman and the responses given by Deputy Rhoads fail to show that he had decided to disengage from his pursuit. The Ombudsman believes our questioning gave ample opportunity for that contention to have been raised. According to the Communications Center records at 1:57.41 A.M. Deputy Rhoads, was suggesting a rolling roadblock; at 1:58.03 A.M. Rhoads, while traveling approximately 120 mph, was asking to “blow by” Deputy Wright; and the accident was reported by Rhoads at 1:58.42 A.M. The Ombudsman finds it difficult to believe Deputy Rhoads was deliberately disengaging in the pursuit based upon these facts.

The Tama County response contends Sheriff Kucera “acted reasonably under circumstances” and seems to suggest the Ombudsman should do more than state we drew no conclusions about the Sheriff’s supervisory role in this pursuit. Even after considering Tama County’s response, the Ombudsman remains unconvinced we should change our stated position regarding the Sheriff’s role. The Ombudsman believes our decision not to make a finding about Sheriff Kucera’s role in this pursuit was appropriate.

While the Ombudsman can appreciate the perceived exposure to litigation articulated by the attorney responding for Tama County, we are unaware that any filing has been made. The Ombudsman’s responsibilities are separate from any other legal proceedings. The Ombudsman disappointed that a timely and critical review and possible modification of pursuit policy in Tama County may be delayed by these anticipations.